

No. 12390

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United States  
Court of Appeals  
For the Ninth Circuit.

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KAUFMAN-BROWN POTATO COMPANY, a  
Partnership Composed of Charles H. Kauf-  
man and Albert H. Brown, CHARLES H.  
KAUFMAN and ALBERT H. BROWN,

Appellants.

vs.

WAYNE LONG, as Trustee in Bankruptcy of the  
Estates of Gerry Horton and J. D. Althouse.  
Doing Business as Gerry Horton Company, a  
Co-Partnership; Gerry Horton and J. D. Alt-  
house, Doing Business as Gerry Horton Farms,  
a Co-Partnership; GERRY HORTON, an In-  
dividual, and J. D. ALTHOUSE, an Indi-  
vidual.

Appellees.

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Transcript of Record

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Appeal from the United States District Court,  
Southern District of California,  
Northern Division.

FILED

JAN 10 1950

PAUL P. O'BRIEN,

CLERK



No. 12390

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Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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For Appellees:

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Bakersfield, Calif.

In the District Court of the United States for the  
Southern District of California Northern Division

No. 6180

In the Matter of:

GERRY HORTON AND J. D. ALTHOUSE, doing  
business as GERRY HORTON COMPANY, a  
co-partnership, GERRY HORTON and J. D.  
ALTHOUSE doing business as GERRY HORTON  
FARMS, a co-partnership, GERRY  
HORTON, an individual, and J. D. ALT-  
HOUSE, an individual,

Alleged Bankrupts.

### INVOLUNTARY PETITION BY THREE CREDITORS

The verified petition of Kaufman, Brown Potato  
Company, a co-partnership; Earl Cecil and J. Deacy  
Brown doing business as Rosedale Warehouse Com-  
pany, a co-partnership; and John Lewis respectfully  
shows:

#### I.

That at all times herein mentioned Gerry Horton  
and J. D. Althouse were, and now are doing business  
as a co-partnership under the firm name of Gerry  
Horton Company, by virtue of the laws of the State  
of California.

#### II.

That at all times herein mentioned Gerry Horton  
and J. D. Althouse were and now are doing business  
as a co-partnership under the name of Gerry Horton



Farms under and by virtue of the laws of the State of California, and for the greater portion of six (6) months next preceding the date of the filing of this petition said co-partnerships had their principal place of business at 201 Sill Building, Bakersfield, Kern County, California, and said individuals, Gerry Horton and J. D. Althouse resided in and had their principal place of business in the City of Bakersfield, County of Kern, State of California.

### III.

That said co-partnerships and said individuals owe debts [2\*] in the amount of more than One Thousand Dollars (\$1000.00) to the petitioning creditors and other creditors.

### IV.

That Kaufman Brown Potato Company is a co-partnership consisting of Charles H. Kaufman and Albert H. Brown, doing business as Kaufman Brown Potato Company, with their principal place of business in the City of Chicago, State of Illinois, and with their principal place of business in the State of California in Kern County, California.

### V.

That the nature and amount of said creditor's claims is that within the past year said creditor advanced monies to the alleged bankrupts in the sum of Twenty-three Thousand, Four Hundred Seventy-nine and 79/100 Dollars (\$23,479.79). That the

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\* Page numbering appearing at bottom of page of original certified Transcript of Record.

entire sum of Twenty-three Thousand, Four Hundred Seventy-nine and 79/100 Dollars (\$23,479.79) remains now due, owing and unpaid from the alleged bankrupts to Kaufman Brown Potato Company, a co-partnership. That of said sum of Twenty-three Thousand Four Hundred Seventy-nine and 79/100 Dollars (\$23,479.79), the sum of Twenty-two Thousand Five hundred Ninety-four and 82/100 Dollars (\$22,594.82) was originally secured by two (2) crop mortgages upon a crop of potatoes, but that the alleged bankrupts have disposed of said crop of potatoes without accounting to the Kaufman Brown Potato Company and accordingly have disposed of the security.

That the sum of Eight Hundred Eighty-four and 97/100 Dollars (\$884.97) is an unsecured obligation. That both of said obligations are fixed as to liability and liquidated in amount.

## VI.

That at all times herein mentioned, Earl Cecil and J. Deacy Brown were doing business as a co-partnership under the firm name of Rosedale Warehouse Company, under and by virtue of the laws of the State of California, and have their principal place of business in Bakersfield, County of Kern, State of California. That said co-partnership is an unsecured creditor of the above named bankrupts.

## VII.

That the nature and amount of said creditor's claim is as follows:

That within the past year said co-partnership furnished the above named alleged bankrupts merchandise of the agreed and reasonable market value of the sum of Three Thousand Five Hundred Eleven and 75/100 Dollars (\$3511.75). That no part of said sum has been paid and that the entire sum now remains due, owing and unpaid from the alleged bankrupts. That said claim is an unsecured claim fixed as to liability and liquidated in amount.

### VIII.

That John Lewis is an individual residing at 1017 Twenty-fifth Street, Bakersfield, California, and is a creditor of the alleged bankrupts on an unsecured claim, fixed as to liability and liquidated in amount. That the nature and amount of said creditor's claim is that within the past year said creditor furnished merchandise to the alleged bankrupts of the agreed and reasonable market value of Five Hundred Eighteen and 68/100 Dollars (\$518.68). That no part of said sum has been paid and the entire sum remains now due, owing and unpaid from the alleged bankrupts to John Lewis.

### IX.

That within four (4) months next preceding the date of filing this petition, to wit: during the month of July 1944, the alleged bankrupts committed acts of bankruptcy in that knowing that they were in an insolvent condition they did make payment in full of accounts to certain creditors and did execute a mortgage upon certain of their equipment, in order

to secure the claim of one D. M. Wasson, a creditor, in the amount of Seven Thousand Two Hundred Fifty and 40/100 Dollars (\$7250.40), and did suffer an attachment of certain of their property in an action in [4] the Superior Court of the State of California in and for the County of Kern, brought by one J. W. McNeil to recover the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00).

That said payments, mortgage and attachment lien constitute a preference of said creditors over the other creditors and constitutes a preference under the Bankruptcy Act in that it permits said creditors, if said preference is allowed to stand, to receive a larger percent of their claims than the other creditors of the alleged bankrupts, including your petitioners, and that the same was given with the intent to prefer said creditors over the other creditors of the alleged bankrupts including your petitioners.

## XI.

And for a further act of bankruptcy your petitioners allege that the alleged bankrupts have allowed the Kern County Bank of Oildale, California to apply the sum of approximately Ten Thousand Dollars (\$10,000.00) to an unsecured obligation to said bank within the past ten (10) days, and that said bankrupts have allowed said Kern County Bank of Oildale, California, to take possession of certain of its assets and equipment to be liquidated by said bank, the value of which is in excess of any secured indebtedness held by said bank, and by reason

thereof said bank has possession of a substantial equity in said equipment which is an asset of said alleged bankrupts.

## XII.

And for a further and additional act of bankruptcy your petitioners allege that within four (4) months last past the alleged bankrupts committed other acts of bankruptcy in that they did within said period of time transfer and pay over certain of their assets to certain of their creditors with intent to prefer said creditors over their other creditors, and as a result of said payments to said creditors as hereinabove alleged, said [5] creditors receiving the payments and assets will receive a larger portion of their obligations than will your petitioners and the other creditors of the alleged bankrupts.

That said transfers amount to a preference as defined by the Bankruptcy Act. That the exact names of the persons to whom said transfers and payments were made are unknown to your petitioners, and upon ascertaining their true names your petitioners will ask leave to amend this additional act of bankruptcy by inserting the true names of said persons.

Wherefore your petitioners pray that service of this petition with subpoena be made upon the alleged bankrupts provided by the Acts of Congress relating to bankruptcy, and that the alleged bankrupts

be adjudged by this Court to be bankrupts within the purview of said Acts.

KAUFMAN BROWN POTATO  
COMPANY,

By /s/ PHILIP BANOVITZ,

Authorized Agent.

ROSEDALE WAREHOUSE  
COMPANY, a co-partnership,

By /s/ B. H. OWEN,

Authorized Agent.

/s/ JOHN LEWIS.

KENDALL, HOWELL &  
DEADRICH,

By /s/ DONALD KENDELL,

Attorney for Petitioning  
Creditors. [6]

Southern District of California,  
State of California, County of Kern—ss.

Philip Banovitz being first duly sworn deposes and says:

That Kaufman Brown Potato Company, a co-partnership, a petitioner in the above entitled bankruptcy matter, is a co-partnership, and that affiant is the duly authorized agent thereof and makes this verification for and on behalf of said co-partnership; that affiant has read the foregoing involuntary petition by three (3) creditors and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on his



information and belief and as to those matters he believes them to be true.

/s/ PHILIP BANOVITZ.

Subscribed and sworn to before me this 4th day of August 1944.

[Seal] /s/ REBA NEATE,  
Notary Public in and for the County of Kern, State  
of California.

Southern District of California,  
State of California, County of Kern—ss.

B. H. Owen being first duly sworn deposes and says:

That Rosedale Warehouse Company, a co-partnership, a petitioner in the above entitled bankruptcy matter is a co-partnership, and that affiant is the duly authorized agent thereof and makes this verification for and on behalf of said co-partnership; that affiant has read the foregoing involuntary petition by three (3) creditors and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters he believes [7] them to be true.

/s/ B. H. OWEN.

Subscribed and sworn to before me this 4th day of August 1944.

[Seal] /s/ REBA NEATE,  
Notary Public in and for the County of Kern, State  
of California.

Southern District of California,  
State of California, County of Kern—ss.

John Lewis being first duly sworn deposes and says:

That he is one of the petitioners named in the foregoing involuntary petition by three (3) creditors; that he has read said petition and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters he believes them to be true.

/s/ JOHN LEWIS.

Subscribed and sworn to before me this 4th day of August 1944.

[Seal]      /s/ REBA NEATE,  
Notary Public in and for the County of Kern, State  
of California.

[Endorsed]: Filed Aug. 5, 1944. [8]

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[Title of District Court and Cause.]

### ORDER OF GENERAL REFERENCE

At Los Angeles, California, in said district on the 5th day of August, 1944.

Whereas, a petition was filed in this court on the 5th day of August, 1944, against Gerry Horton Company, and Gerry Horton Farms, a co-partnership, composed of Gerry Horton and J. D. Althouse, and Gerry Horton and J. D. Althouse, indi-



vidually, alleged bankrupts above named, praying that they be adjudged a bankrupt under the Act of Congress relating to bankruptcy, and good cause now appearing therefor;

It is ordered that the above-entitled proceeding be, and it hereby is, referred to Waldo R. Bergman, Esq., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said Gerry Horton Company, and Gerry Horton Farms, a co-partnership, composed of Gerry Horton and J. D. Althouse, and Gerry Horton and J. D. Althouse, individually, shall henceforth attend before said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

/s/ PAUL J. McCORMICK,  
District Judge.

[Endorsed]: Filed Aug. 5, 1944. [9]

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[Title of District Court and Cause.]

ORDER OF ADJUDICATION OF BANK-  
RUPTCY AND ORDER FOR FILING OF  
SCHEDULES IN BANKRUPTCY

At Bakersfield in said Southern District of California on the 15th day of August, 1944, before the Honorable Waldo R. Bergman, Referee in Bankruptcy, the petition of Kaufman Brown Potato

Company, a co-partnership, Earl Cecil and J. Deacy Brown doing business as Rosedale Warehouse Company, a co-partnership, and John Lewis, praying that Gerry Horton Company and Gerry Horton Farms, a co-partnership composed of Gerry Horton and J. D. Althouse, and Gerry Horton and J. D. Althouse, individuals, be adjudged bankrupts within the true intent and meaning of the Acts of Congress related to bankruptcy, having been heard and duly considered, the said Gerry Horton Company and Gerry Horton Farms, a co-partnership, composed of Gerry Horton and J. D. Althouse, and Gerry Horton, an individual, and J. D. Althouse, an individual, are hereby declared and adjudged bankrupt accordingly.

It Is Further Ordered that the said bankrupts prepare and file their schedules in bankruptcy setting forth all of their assets and liabilities in accordance with the laws relating to bankruptcy, with the above-entitled Court on or before the 21st day of August, 1944.

Witness the Honorable Referee of said Court and the seal thereof at Bakersfield in said district on the 15th day of August, 1944.

/s/ WALDO R. BERGMAN,  
Referee in Bankruptcy.

Filed 8/15/44.

/s/ WALDO R. BERGMAN,  
Referee.

[Endorsed]: Filed Aug. 26, 1944. [10]

[Title of District Court and Cause.]

ORDER APPROVING TRUSTEE'S  
BOND

At Bakersfield, California, in said district, on the 19th day of September, 1944.

The above-named Gerry Horton Company and Gerry Horton Farms, a co-partnership composed of Gerry Horton and J. D. Althouse, and Gerry Horton and J. D. Althouse, individuals, having been adjudged bankrupts by a petition filed against them on the 5th day of August, 1944, and Wayne Long of Bakersfield, California, in said district, having been duly appointed trustee of the estate of said bankrupts and having duly qualified as such trustee by giving a bond with sufficient sureties for the faithful performance of his duties in the amount fixed by the order of this Court, to wit: Five Thousand Dollars (\$5,000.00);

It Is Hereby Ordered that the said bond be, and it is hereby, approved.

Dated: September 19, 1944.

WALDO R. BERGMAN,  
Referee in Bankruptcy.

CERTIFICATE OF TRUE COPY

United States of America,  
Southern District of California,  
Northern Division—ss.

William A. McGugin, Referee in Bankruptcy in  
and for the County of Fresno, State of California,

in and for the said district, do hereby certify that the foregoing is a true and correct copy of Order Approving Trustee's Bond in the above-entitled matter as the same appears of record in the proceedings in said matter now on file in my office.

In Witness Whereof, I have hereunto set my hand this 16th day of July, 1948.

/s/ WILLIAM A. McGUGIN,  
Referee in Bankruptcy. [11]

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[Title of District Court and Cause.]

PETITION FOR ORDER AMENDING, MODIFYING AND CHANGING ORDER OF ADJUDICATION AND PETITION FOR ORDER TO SHOW CAUSE DIRECTED AGAINST PARTNERS

To The Honorable Paul J. McCormick, Judge of the United States District Court, Southern District of California, Northern Division.

The verified petition of Wayne Long respectfully represents to the Court herein as follows:

I.

That he is the duly appointed, qualified and acting Trustee of the estates of the above bankrupts.

II.

That on the 5th day of August, 1944, an involuntary petition in bankruptcy was filed at the hour

of 10:10 A.M., and that a copy of said petition is attached hereto and marked Exhibit "A", and made a part hereof.

That an Order of General Reference was made by the Honorable Paul J. McCormick, one of the Judges of the above-entitled Court, which was filed in the above-entitled Court on the 5th day of August, 1944 at 11:30 A.M., a copy of which is attached hereto, and marked Exhibit "B". [12]

That on August 9, 1944, the Honorable Waldo R. Bergman, Referee in Bankruptcy, to whom the above matter was referred by the Judge, made an order authorizing Maurice E. Tice, Constable of the Sixth Township, County of Kern, State of California, to serve subpoenas on the alleged bankrupts. That between the 8th day of August, 1944, and the 10th day of August, 1944, service was made upon J. D. Althouse and Gerry Horton individually, and upon said parties as Gerry Horton Farms, a co-partnership, and thereafter the Referee on the 15th day of August, 1944 made an order of adjudication of bankruptcy and order for filing of schedules in bankruptcy, a copy of which is attached hereto, marked Exhibit "C", and which order adjudicated Gerry Horton Company and Gerry Horton Farms, a co-partnership, composed of Gerry Horton and J. D. Althouse, and Gerry Horton, an individual, and J. D. Althouse, an individual, as bankrupts.

### III.

That your Trustee is informed and believes and

therefore alleges that the co-partnership of Gerry Horton Farms, one of the above bankrupts, at the time of the filing of the petition in bankruptcy was composed of Gerry Horton, J. D. Althouse, and the partnership of Kaufman-Brown Potato Company, which partnership is composed of Charles H. Kaufman and Albert H. Brown, and was not composed of only Gerry Horton and J. D. Althouse, as is set forth in the involuntary petition and the order of adjudication therein. That on or about the 22nd day of January, 1944, the said Gerry Horton and J. D. Althouse, as co-partners doing business under the firm name and style of Gerry Horton Farms, and Charles H. Kaufman and Albert H. Brown, doing business under the firm name and style of Kaufman-Brown Potato Company, entered into a contract, a copy of which is attached hereto and marked Exhibit "D"; and that on or about the 16th day of November, 1943, the same person entered into a contract, attached hereto is a copy of said contract, marked Exhibit "E", which contract provides for the operation of the property of Gerry Horton Farms and the manner in which the profits would be divided among the parties, and the manner and percentage of which the losses were to be paid by the parties. That thereafter the said Gerry Horton, J. D. Althouse and the partnership of Kaufman-Brown Potato Company, composed of Charles H. Kaufman and Albert H. Brown, maintained and operated the business of Gerry Horton Farms, one of [13] the above bankrupts, in accordance with the



terms and conditions as set forth in said agreements, copies of which are attached hereto and marked Exhibits "D" and "E". That during the operations of said business and prior to the filing of the bankruptcy petition herein, the said partnership of Gerry Horton Farms, composed of said Gerry Horton, J. D. Althouse and Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, became indebted to various and sundry creditors of said bankrupt estate. That petitioner is further informed and further alleges upon information and belief that the originals of said contracts and agreements, marked Exhibits "D" and "E", were shown to various and divers parties, and thereafter said persons advanced credit to said partnership based upon the faith and credit of not only Gerry Horton and J. D. Althouse, but also Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown. That said Kaufman-Brown Potato Company, a co-partnership, composed of Charles H. Kaufman and Albert H. Brown has advised various and divers persons that they were partners with said Gerry Horton and J. D. Althouse in the partnership known as Gerry Horton Farms. That at the time the involuntary petition in bankruptcy was signed by Kaufman-Brown Potato Company, and said Kaufman-Brown Company, composed of said persons as heretofore mentioned, knew that they were partners and/or joint venturers with Gerry Horton and J. D. Althouse, a co-partnership

being operated under the name of Gerry Horton Farms, and said Charles H. Kaufman and Albert H. Brown falsely and fraudulently represented to other creditors that Gerry Horton and J. D. Alt-house were the only partners in said Gerry Horton Farms, and did not inform the other creditors who signed the involuntary petition, nor did they inform the Court of the true fact that they, as partners doing business under the firm name and style of Kaufman-Brown Potato Company, was a partner of the co-partnership of Gerry Horton Farms.

#### IV.

That by reason of the agreements marked Exhibits "D" and "E", and by reason of the conduct of Kaufman-Brown Potato Company, a co-partnership, composed of Charles H. Kaufman and Albert H. Brown, and each of them, the said co-partnership of Kaufman-Brown Potato Company and Charles H. Kaufman and Albert H. Brown, each became individually and severally liable for the payment of the debts and [14] obligations created by said Gerry Horton Farms, and in the maintenance and operation of its business in Kern County, California; and that Charles H. Kaufman, Albert H. Brown, and the co-partnership of Kaufman-Brown Potato Company, composed of said persons, and each of them are individually liable under and by virtue of the laws of the State of California for the partnership debts created by Gerry Horton Farms, and accordingly under the provisions of the Bankruptcy Act, to-wit: Section



V thereof, said Kaufman-Brown Potato Company, a co-partnership, Charles H. Kaufman and Albert H. Brown are deemed to be and are general partners of said Gerry Horton Farms, one of the above bankrupts.

V.

That Gerry Horton individually had no assets other than those exempt, and that J. D. Althouse had no assets other than those exempt, and that all of the assets of Gerry Horton Farms, a bankrupt, and Gerry Horton Company, a co-partnership, coming into the possession and under the control of your Trustee that has any value has been liquidated and reduced to cash, and the total amount of cash on hand is \$14,642.58, and that no dividend has been paid to creditors, and that no fees have been paid to your Trustee, nor to the former attorneys for the Trustee, nor the present attorney for the Trustee, and that the Referee has not determined the amount of said sum of cash on hand that belongs to the Gerry Horton Farms, and the amount that belongs to Gerry Horton Company; that your Trustee believes that not over \$1025.00 belongs to Gerry Horton Farms, and that the balance of said cash on hand belongs to Gerry Horton Company, and a total of \$13,301.29 in general claims have been filed against Gerry Horton Farms, not including the alleged claim of Kaufman-Brown Potato Company in the sum of \$23,479.79, to which the Trustee has filed objection, and that your Trustee does not have on hand a sufficient amount of money to pay the

creditors of the Gerry Horton Farms in full after the Court has allowed compensation to your Trustee and to the prior attorneys for the Trustee, and the present attorney for the Trustee; and your Trustee alleges upon information and belief that it will take \$15,301.29 in addition to the cash on hand to pay the expenses of administration and the creditors in full. [15]

## VI.

That your petitioner is further informed and believes and therefore alleges that Charles H. Kaufman, Albert H. Brown and Kaufman-Brown Potato Company, a co-partnership composed of said parties, both by reason of their acts and their conduct and in particular by surrendering of the assets of Gerry Horton Farms to your trustee for the administration thereon in this estate, and the filing of certain proof of debt claimed in the proceedings herein, and by the filing of the involuntary petition in bankruptcy, consented to the administration of the partnership property and the assets in bankruptcy proceedings, and accordingly the Court herein having acquired jurisdiction of the above-named bankrupt Gerry Horton Farms, has by virtue of the provisions of the Bankruptcy Act jurisdiction of all of the general partners and of the administration of the partnership, and of the individual properties of the individual partners.

## VII.

That Kaufman-Brown Potato Company, a co-partnership doing business in the State of Illinois, having its place of business at 64 South Water-market, Chicago, Illinois, and also doing business with the State of California, having its principal place of business at 9381 Olympic Boulevard, Beverly Hills, California; and that its agent and representative in the State of California, is Philip Banovitz, and that Gerry Horton Farms, a co-partnership, operated and had its principal place of business in Kern County, State of California, and at no other place, and at the time of the filing the petition in bankruptcy, both Gerry Horton and J. D. Althouse were residents of Kern County, California, and have resided in said County of Kern, State of California for a period of over six months prior to the filing of said bankruptcy.

Wherefore, your Trustee prays that an order to show cause be issued directed against Charles H. Kaufman, Albert H. Brown and Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, requiring them to appear before this Court on a day certain, and to show cause, if any they have, why an order should not be made and entered herein ordering adjudging and decreeing that each of them is a general partner of Gerry Horton Farms, one of the above-entitled bankrupts, and why a further order should not be [16] made and entered herein amending, modifying and changing the order of

adjudication herein in conformity to the foregoing, and for such other and further relief as to the Court may seem just and proper.

/s/ WAYNE LONG,

Trustee of the above  
bankrupts.

/s/ C. W. JOHNSTON,

Attorney for Trustee.

State of California,  
County of Alameda—ss. .

Wayne Long, being first duly sworn deposes and says:

That he is the Petitioner named in and who makes the foregoing Petition; that he has read said Petition and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to such matters, that he believes them to be true.

/s/ WAYNE LONG.

Subscribed and sworn to before me this 6th day of November, 1946.

[Seal]      Illegible

Notary Public in and for the County of Alameda,  
State of California.

My Commission Expires February 11, 1947. [17]

Exhibits A, B, C, and D to the Foregoing Petition

“Exhibit “A” to this Petition, being a copy of the involuntary petition in bankruptcy, is not here set forth in that the original thereof is contained in the said record on appeal, pages 2 to 10, thereof;

Exhibit “B” to this Petition, being a copy of Order of References, is not here set forth in that the original thereof is contained in the said record on appeal at page 10, thereof;

Exhibit “C” to this Petition, being a copy of the Order of Adjudication of Bankruptcy and Order for Filing of Schedules in Bankruptcy, is not here set forth in that the original thereof is contained in the said record on appeal at page 11, thereof;

Exhibit “D” to this petition, being a copy of Agreement dated the 22nd day of January, 1944, is not set forth in that the original thereof is contained in the said record on appeal as respondent’s Exhibit “D”; and

Exhibit “E” to this petition, being a copy of Agreement dated the 16th day of November, 1943, is not set forth in that the original thereof is contained in the said record on appeal as respondent’s Exhibit “E”.

[Endorsed]: Filed Nov. 15, 1946. [17-B]

[Title of District Court and Cause.]

### ORDER TO SHOW CAUSE

Upon reading and filing the verified petition of Wayne Long, Trustee for Gerry Horton Farms, one of the above bankrupts, and good cause appearing therefrom, and upon motion of C. W. Johnston, attorney for the Trustee, and no adverse interest appearing thereat:

It Is Ordered that Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, appear before the Honorable Waldo R. Bergman, one of the referees of this court, both as a referee and as special master, at 130 Morgan Building 1711 Chester Avenue, Bakersfield, California, on the 19th day of December, 1946, at the hour of 10 o'clock A.M. thereof, to show cause if any they have why an order should not be made and entered herein ordering, adjudging and decreeing that each of them is a general partner of Gerry Horton Farms, one of the above-entitled bankrupts, and why a further order should not be made and entered herein amending, modifying and changing the order of adjudication herein in conformity with the petition herein. [38]

It Is Further Ordered that said persons are directed to file such answer or other pleadings as they deem proper within five days of the hearing herein, serving a copy thereof upon counsel for the trustee.

It Is Further Ordered that the referee and special



master herein shall hear and determine said matter and shall make his findings, conclusions of law and the order thereon.

It Is Further Ordered that the petition and order to show cause herein may be served upon the aforementioned persons by serving a copy thereof upon their attorneys of record as they appear in the proceedings herein, not later than ten days prior to the hearing of the Order to Show Cause herein.

Dated: This 15th day of November, 1946.

/s/ LEON R. YANKWICH,

Judge of U.S. District Court.

[Endorsed]: Filed Nov. 15, 1946. [39]

[Title of District Court and Cause.]

### ANSWER TO ORDER TO SHOW CAUSE

Now comes Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown who for an answer to the Trustee's Petition of Order Amending, Modifying and Changing Order of Adjudication and Petition for Order to Show Cause Directed Against Partners admit, deny and allege as follows:

#### I.

Admit the matters set forth in Paragraphs I and II.

#### II.

Deny each and every allegation contained in paragraph III save and except that as follows:

"That on or about the 22nd day of January, 1944, the said Gerry Horton and J. D. Althouse, as co-partners doing business under the firm name and style of Gerry Horton Farms, and Charles H. Kaufman and Albert H. Brown doing business under the firm name and style of Kaufman-Brown Potato Company, [40] entered into a contract, a copy of which is attached hereto and marked Exhibit D; and that on or about the 16th day of November, 1943 the same persons entered into a contract, attached hereto is a copy of said contract marked Exhibit E."

#### III.

Deny each and every allegation contained in paragraph IV.



IV.

Deny the following allegations contained in Paragraph V:

1. That Gerry Horton individually had no assets other than those exempt.

2. That J. D. Althouse had no assets other than those exempt.

3. That all of the assets of Gerry Horton Farms, a bankrupt, and/or Gerry Horton Company, a co-partnership coming into the possession and/or under the control of your trustee that have any value have been liquidated and/or reduced to cash.

4. That it will take \$15,301.29 or any other sum which cannot be realized from the assets of the adjudicated bankrupts in addition to the cash on hand to pay the expenses of administration and the creditors in full.

V.

Allege that the trustee herein has failed and neglected to take appropriate action to recover upon the following assets of the adjudicated bankrupts;

1. Claim against Morris & Larkin for failure to furnish water.

2. Claim against Morris & Larkin for a refund of rent.

3. Claim against wife of J. D. Althouse for property transferred to her by J. D. Althouse.

## VI.

Deny each and every allegation contained in Paragraph VI.

## VII.

Deny the allegations of Paragraph VII as to this partnership having its principal place of business at 9381 Olympic Boulevard, [41] Beverly Hills, California and allege that the principal place of business of this partnership is at 64 South Water-market, Chicago, Illinois.

## VIII.

Allege that all of the obligations incurred in connection with the contracts marked Exhibits E and F have been paid in full, save and except those due to Kaufman-Brown Potato Company.

Wherefor, Kaufman-Brown Potato Company prays that said order to show cause be dismissed with costs.

KENDALL, HOWELL &  
DEADRICH,

By /s/ WILLIAM H. HOWELL, JR.  
Attorneys for Kaufman-Brown Potato Company,  
a co-partnership composed of Charles H. Kauf-  
man and Albert H. Brown. [42]

United States of America,  
Southern District of California,  
County of Kern—ss.

William A. Howell, Jr., being first duly sworn  
deposes and says that he is one of the attorneys

for Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, that said co-partners are both absent from the Southern District of California, and for that reason affiant makes this verification on behalf of said partners; that affiant has read the foregoing answer and knows the contents thereof and the same is true of his own knowledge except as to those matters alleged upon information and belief and as to them he believes them to be true.

/s/ WILLIAM A. HOWELL, JR.

Subscribed and sworn to before me this 13th day of December, 1946.

[Seal] /s/ EVELYN BLAIR,  
Notary Public in and for the County of Kern, State  
of California.

Filed Dec. 16, 1946.

/s/ WALDO R. BERGMAN.

Receipt of copy acknowledged. [43]

[Title of District Court and Cause.]

### STIPULATION

It Is Stipulated that the hearing on the orders to show cause against Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert Brown, be continued until Ten o'clock A.M. on October 4, 1947.

It Is Further Stipulated that William A. McGugin act as Special Master instead and in place of Waldo R. Bergman, and that all testimony heretofore given before Waldo R. Bergman as Special Master and as Referee which has been transcribed by a court reporter shall be read by William A. McGugin as Referee and Special Master and be considered by him the same as if said testimony was given before him.

Dated: September 10, 1947.

/s/ C. W. JOHNSTON,  
Attorney for Trustee.  
KENDALL, HOWELL &  
DEADRICH,

By /s/ DONALD KENDALL,  
Attorneys for Kaufman-  
Brown Potato Company.

[Title of District Court and Cause.]

## REFEREE'S MEMORANDUM OF OPINION

Gerry Horton Farms although referred to as a joint venture in the order is actually a co-partnership.

Section 2400 of California Civil Code provides "A partnership is an association of two or more persons to carry on as co-owners a business for profit."

Kaufman-Brown Potato Company became owners of a one-half interest in all potatoes planted during 1944 by virtue of paragraph one of the agreements in each case. (See Section 1735 C.C.C.) Is this ownership consistent with the creditor-debtor legal relationship or the relationship of partners? There seems to be only one answer to this.

Subdivision 4 of Section 2401 of the California Civil Code provides that an agreement or receipt of a share of the profits of a business is *prima facie* evidence that a person is a partner.

The agreements in the instant case not only provided for sharing the profits (paragraph 4 of agreements) but also a [45] sharing of the costs of operations and a sharing of the losses. (paragraph 7 of agreements).

The question is of course "what legal relationship was created between the parties by said agreements and conduct of the parties?" The petitioners contend it was one of creditor-debtor—can it be conceived that a lender would agree to pay one-half of

costs and losses suffered? The only reasonable interpretation of these provisions is that a partnership was created with its usual attributes.

A partnership may be formed for a single venture.

Gray vs. The Janss Investment Co.  
186 Cal. 634

Stenian vs. Tashjian  
178 Cal. 623

20 Cal. Jur. Page 687

The Court in a case involving an agreement very similar to the ones under consideration here held that a partnership had been created in Associated Piping Co. vs. Jones, 17 Cal. App. (2d) 107. There the court also states that the contract controls not the extraneous intent of the parties.

The Court there further states that the contract can give all control and management to one partner. The Court states at page 111 "If that contract, and if those dealings, so far as the world is concerned, measure up to the partnership relation, with the joint duties and liabilities attaching thereto, then, so far as third parties are concerned who have had dealings with them, they are partners."

Kaufman-Brown Potato Company secured, by these agreements, all the powers, privileges and advantages of partners. [46] Therefore they must assume the duties and liabilities of partners.

It is to be noted that the crop mortgage provided for in said agreements covered only First Parties'

one-half interest in said crops and were executed by the First Parties solely as security for the performance and conditions therein contained and for no other purpose, and that First Parties were not to be held liable to Kaufman-Brown Potato Company for loss occasioned by inclement weather, acts of God, losses resulting from acts of war or loss resulting from causes which are beyond the control of First Parties.

In other words, Kaufman-Brown Potato Co. did not receive an absolute promise to be repaid in any event but if the crops were destroyed by weather, floods, drought, war, etc. they were not to be repaid. Is this an incident of creditor-debtor relationship? It was quite possible petitioners would not be entitled to receive a cent in repayment or otherwise under the terms of the contract.

Furthermore, by virtue of paragraph 4 of said agreements both parties were to be reimbursed for all costs and expenses before any distribution of profit was to be made. So that if the relationship were one of creditor-debtor and the 50% profit provided for Kaufman-Brown Potato Co. was construed to be interest on the money advanced they would receive no interest until the debtor had been repaid his expenses also. This provision is very unusual and unreasonable for creditor-debtor relationship but a usual and ordinary incident of a partnership relation.

It is obvious that even though I denominated the relationship one of joint venture in my findings and



conclusions that a partnership was actually formed and carried out.

The petitioners consented to the adjudication when they [47] filed the involuntary petition against the partnership. Since Kaufman-Brown Potato Co. filed the involuntary petition against the partnership of which it was a partner it thereby waived any right to object to adjudication.

The Court in the matter of *In re Filmar*, 177 Fed. 170 held that the joining by the non-bankrupt partner with a firm creditor in a petition asking that the former firm assets be applied first on firm debts was consent to adjudication of the partnership.

See the cases of *Sturn vs. Ulrich*, 10 Fed. (2d) 9; and *The Matter of Shields and Mattison*, 14 Fed. (2d) 641.

Respectfully submitted,

/s/ WILLIAM A. McGUGIN,

Referee in Bankruptcy. [48]

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The petition for order amending, modifying, and changing order of adjudication as to Gerry Horton Farms, a co-partnership, was regularly referred to Waldo R. Bergman, as Referee in Bankruptcy, and as special master for all purposes and to hear and determine the matters set forth in the trustee's

petition and to make findings, conclusions of law, and order thereon. Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, filed answer to the petition of the trustee, and the matter being at issue the same was set for definite hearing by Waldo R. Bergman, and the matter was continued from time to time at the request of Kaufman-Brown Potato Company, and thereafter testimony was introduced on behalf of Kaufman-Brown Potato Company on May 12 and 13, 1947, and the matter was regularly continued from time to time so that Gerry Horton, one of the bankrupts, could be present to testify, and the undersigned William A. McGugin was appointed as Referee in the place and stead of Waldo R. Bergman, and a stipulation was filed by the respective parties that the undersigned referee could act in the place and stead of Waldo R. Bergman and that all testimony heretofore given before [49] Waldo R. Bergman, as special master and as referee, which had been transcribed by a court reporter, should be read by William A. McGugin as referee and special master and be considered by him the same as if the testimony was given before him, and testimony was produced by the trustee and Kaufman-Brown Potato Company, a co-partnership, on the 8th day of December, 1947, and counsel for both sides were orally heard and later presented written briefs to support their respective positions, and the referee having been fully advised in the premises, does hereby make his finding of facts, to wit:

## Findings of Fact

1. That Wayne Long is the duly appointed, qualified and acting trustee of the estates of the above bankrupts.

2. That on the 5th day of August, 1944, an involuntary petition in bankruptcy was filed at the hour of 10:10 o'clock A.M. by Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, and two other persons against the above mentioned bankrupts, and that a true copy of said involuntary petition was attached to the petition of the trustee and marked Exhibit "A", and that an order of general reference was made by the Honorable Paul J. McCormick, one of the judges of the above entitled court, which was filed in the above entitled court on the 5th day of August, 1944, at 11:30 o'clock A.M. a true copy of which was attached to the trustee's petition and marked Exhibit "B", and that on August 9, 1944, Waldo R. Bergman, referee in bankruptcy, to whom the above matter was referred by the judge, made an order authorizing Maurice E. Tice, Constable of the Sixth Township, County of Kern, State of California, to serve subpoenas on the alleged bankrupts. That between the 8th day of August, 1944, and the 10th day of August, 1944, service was made upon J. D. Althouse and Gerry Horton individually, and upon said parties as Gerry Horton Farms, a co-partnership, and thereafter the referee, on the 15th day of

August, 1944, made an order of adjudication of bankruptcy and order for filing of schedules in bankruptcy, a true copy of which order was attached to trustee's petition and marked Exhibit "C", and which order adjudicated Gerry Horton Company, a co-partnership composed of Gerry Horton and J. D. Althouse, Gerry Horton Farms, a co-partnership composed of Gerry Horton and J. D. Althouse, and Gerry Horton, an individual, and J. D. Althouse, an individual, as bankrupts. [50]

3. That at the time the involuntary petition in bankruptcy was signed by Kaufman-Brown Potato Company the said Kaufman-Brown Potato Company, and each of its partners, composed of said persons heretofore mentioned, knew that said Kaufman-Brown Potato Company was a joint venture or partners with Gerry Horton Farms, a co-partnership composed of Gerry Horton and J. D. Althouse, in the raising of potatoes, under the name of Gerry Horton Farms, a joint venture, and knew that there was also a partnership composed of Gerry Horton and J. D. Althouse doing business under the name of Gerry Horton Farms not engaged in the raising of potatoes and not operating during the time potatoes were raised and in which said Kaufman-Brown Potato Company, Charles H. Kaufman and Albert H. Brown were not interested, and knew that said Kaufman-Brown Potato Company was a creditor of said joint venture in the sum of \$22,594.82 and was not a creditor against

the Gerry Horton Farms, a partnership composed of only Gerry Horton and J. D. Althouse; and the said Kaufman-Brown Potato Company, Charles H. Kaufman and Albert H. Brown each falsely represented, knowing same was false, to the Court and creditors by the filing of said bankruptcy petition that Gerry Horton and J. D. Althouse were the only partners in the joint venture of raising potatoes, and that the party raising potatoes under the name of Gerry Horton Farms was the partnership composed of only Gerry Horton and J. D. Althouse; and the said Kaufman-Brown Potato Company, Charles H. Kaufman, and Albert H. Brown requested and consented that the Court adjudicate Gerry Horton Farms, the party who was raising potatoes and who was indebted to Kaufman-Brown Potato Company, a bankrupt.

4. That the attorney for said petitioning creditors was Donald Kendall and that at a meeting of creditors held on the 16th day of September, 1944, the said Donald Kendall, representing said Kaufman-Brown Potato Company and other creditors, secured the election and/or appointment of Wayne Long as trustee, and thereafter said Donald Kendall and Dominic Bianco, at the request of said trustee, were appointed as attorneys for said trustee and acted as attorneys for said trustee until they resigned on or about the first part of December, 1945; and during said period of time said Kaufman-Brown Potato Company, Charles H. Kaufman and Albert H. Brown never advised the Court that there



were two separate partnerships and that Kaufman-Brown Potato Company was a partner of Gerry Horton Farms, a joint [51] venture; and said Kaufman-Brown Potato Company consented and requested the Court to administer the estate of Gerry Horton Farms, a co-partnership, who was raising potatoes and who was indebted to Kaufman-Brown Potato Company.

5. That the Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, has its principal place of business at 64 South Watermarket, Chicago, Illinois, and during the year 1944 was doing business in the State of California and had its office and California place of business at 201 Sill Building, Bakersfield, County of Kern, State of California, being the same office as used by all of the above bankrupts.

6. That on or about the 22nd day of January, 1944, the said Gerry Horton and J. D. Althouse, as co-partners doing business under the firm name and style of Gerry Horton Farms, and Charles H. Kaufman and Albert H. Brown doing business under the firm name and style of Kaufman-Brown Potato Company, entered into a joint venture agreement, a true copy of which agreement was attached to the petition of the trustee and marked Exhibit "D", and that said persons agreed to the raising of potatoes upon certain terms and conditions upon certain real property known as "Arvin property"

located in the County of Kern, State of California, and particularly described as follows:

Northwest quarter (NW $\frac{1}{4}$ ) of Section Twenty-seven (27), Township Thirty-two (32) South, Range Twenty-nine (29) East, M. D. B. & M., and containing one hundred sixty acres (160) more or less, and on or about the 16th day of November, 1943, the same persons entered into a joint venture agreement, a true copy of which agreement is attached to trustee's petition and marked Exhibit "E", and that said persons agreed to raising of potatoes upon certain terms and conditions upon certain real property known as "Shafter property" located in the County of Kern, State of California, and particularly described as follows:

All of the fractional Southwest quarter (SW $\frac{1}{4}$ ) of Section Eighteen (18), Township Twenty-eight (28) South, Range Twenty-six (26) East, M. D. B. & M., and containing one hundred eighty-six (186) acres, more or less.

That it was the actual intention of Kaufman-Brown Potato Company, a co-partnership, and its partners as heretofore mentioned, and Gerry Horton Farms, a co-partnership, and its partners as heretofore mentioned, to form a partnership or [52] joint venture for the raising of potatoes on the real properties above described and each of the parties had the right and could make contracts and incur liabilities on behalf of said joint venture and manage and control the business, and jointly carry on the business of said joint venture; and said parties



did jointly participate in the management and control of the business of said joint venture and that pursuant to the terms of said agreements the said Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a co-partnership composed of J. D. Althouse and Gerry Horton, commenced business on November 16, 1943 of the said joint venture under the name of Gerry Horton Farms and continued said joint venture until August 5, 1944; that Gerry Horton and J. D. Althouse did sell, convey and transfer to said Kaufman-Brown Potato Company a fifty per cent (50%) interest in the potato crop on the Arvin property and a forty per cent (40%) interest in the potato crop on the Shafter property; that each partnership became a co-owner in said potatoes to be raised for profit by said joint venture; that each partner was to pay fifty per cent (50%) of the joint ventures cost of harvesting the potatoes on the Arvin property and said Kaufman-Brown Potato Company was to pay forty per cent (40%) of said cost on the Shafter property; that the net profits or losses were to be divided between the said partners on the Arvin property and the said Kaufman-Brown Potato Company was to receive forty per cent (40%) of the profit or bear forty per cent (40%) of the losses on the Shafter property, and that during the period heretofore mentioned there was planted, raised and harvested by said joint venture, crops of potatoes, and that said joint venture, com-

posed of said partnership heretofore mentioned, doing business under the name of Gerry Horton Farms in the raising of potatoes during the period heretofore mentioned on the above described properties, did purchase goods, wares, merchandise, electricity and water and did borrow money from the hereinafter mentioned persons in the amounts set forth after their names, all of which was used for the raising of potatoes on said properties by said joint venture for the benefit of said joint venture as follows, to wit:

|                                     |            |
|-------------------------------------|------------|
| Rexroth & Rexroth .....             | \$ 282.54  |
| General Petroleum Corporation ..... | 36.06      |
| A. H. Karpe .....                   | 169.83     |
| Stroud-Seabrook .....               | 106.58     |
| Bakersfield Hardware Co. ....       | 50.32      |
| Wasco Hardware Co. ....             | 68.46      |
| Kern County Bank .....              | 2,154.35   |
| Rosedale Warehouse Co. ....         | 880.99     |
| Pacific Gas & Electric Co. ....     | 2,847.61   |
| King Lumber Co. ....                | 364.16     |
| Central Canal Co. ....              | 583.40     |
| <hr/>                               |            |
| Total .....                         | \$7,544.30 |

That all of said amounts are owing to said creditors and have not been paid.

7. That the trustee of Gerry Horton Farms, a co-partnership composed of Gerry Horton and J. D. Althouse, has in his possession cash in the sum of \$1,471.77 being money obtained from the sale of personal property, of \$271.50 for potatoes, \$338.64

for sacks, \$199.13 for pipes, \$85.00 for potato roller, \$325.00 for Killefen carrier and ditcher, \$125.00 for twine, \$40.00 for 200 gallon gas tank, \$150.00 for 1000 gallon gas tank and pump, and \$17.50 for five grease guns, which belongs to Gerry Horton Farms, a joint venture composed of Gerry Horton Farms, a co-partnership composed of Gerry Horton and J. D. Althouse, and Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, and that there are no other assets belonging to said joint venture and that of said sum above mentioned \$383.22 has been expended in administration costs. That Gerry Horton individually has no assets other than those exempt, and J. D. Althouse individually has no assets other than those exempt; that Gerry Horton Company, a co-partnership composed of Gerry Horton and J. D. Althouse, has cash on hand in the sum of \$1,908.77 and no other assets, and claims filed and approved in the sum of over \$38,-092.31, and that Gerry Horton Farms, a co-partnership composed of Gerry Horton and J. D. Althouse, has cash on hand in the sum of \$10,742.43 and no other assets, and claims filed and approved in the sum of over \$48,530.14; that no fees have been paid to the attorney for the trustee and the former attorneys for the trustee, nor has the trustee been paid in full, nor have referee's fees, expenses and commissions been paid in full.

8. That none of the allegations of Kaufman-Brown Potato Company's answer are true except those allegations herein found to be true.

From the foregoing findings of fact, the referee makes his conclusions of law as follows, to wit: [54]

### Conclusions of Law

1. That by reason of the partnership agreements heretofore mentioned and by the conduct of Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, and each of them, the said co-partnership of Kaufman-Brown Potato Company and Charles H. Kaufman and Albert H. Brown each became individually and severally liable for the payment of the debts and obligations mentioned and described in paragraph 7 of the findings, and trustee fees, attorney fees for trustee's attorney, and all other bankrupt expense in connection with Gerry Horton Farms, a joint venture.

2. That Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, is a general partner of the joint venture of Gerry Horton Farms, a joint venture composed of Kaufman-Brown Potato Company, a co-partnership consisting of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a co-partnership consisting of Gerry Horton and J. D. Althouse.

3. That Charles H. Kaufman, Albert H. Brown and Kaufman-Brown Potato Company, a co-partnership composed of said parties, both by reason of their acts and their conduct and in particular by surrendering of the assets of Gerry Horton Farms, a joint venture, to the trustee for the ad-

ministration thereof, and the filing of certain proof of debt claimed against said joint venture are now estopped from denying that they did not consent to the adjudication in bankruptcy against said joint venture, and by the filing of the involuntary petition in bankruptcy consented to adjudication in bankruptcy of said joint venture and to the administration of the joint venture property and the assets in bankruptcy proceedings; and accordingly the court herein having acquired jurisdiction of Gerry Horton Farms, the joint venture composed of said Kaufman-Brown Potato Company, a co-partnership, and Gerry Horton Farms, a co-partnership, has, by virtue of the provisions of the Bankruptcy Act, jurisdiction of the administration of said joint venture; and that the order of adjudication should be corrected, amended and modified by adding thereto, in addition to those adjudged bankrupts, "Gerry Horton Farms, a joint venture composed of Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a co-partnership composed of Gerry Horton and J. D. Althouse." [55]

4. That Wayne Long be appointed and/or continue as trustee of said joint venture, without any additional bond.

Dated: May 22nd, 1948.

/s/ WILLIAM A. McGUGIN,

Referee.

[Endorsed]: Filed May 22, 1948. [56]

[Title of District Court and Cause.]

### ORDER

By reason of the law and findings of fact and conclusions of law on file herein;

It Is Ordered, Adjudged and Decreed:

1. That the order of adjudication of bankruptcy dated August 15, 1944 signed by Waldo R. Bergman, Referee in Bankruptcy, be and it is hereby amended and modified by changing the first paragraph of said order to read as follows:

“At Bakersfield, in the Southern District of California, on the 15th day of August, 1944, before Honorable Waldo R. Bergman, Referee in Bankruptcy, the petition of Kaufman-Brown Potato Company, a copartnership, Earl Cecil and J. Deacy Brown doing business as Rosedale Warehouse Company, a copartnership, and John Lewis praying that Gerry Horton Company and Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse, and Gerry Horton and J. D. Althouse, individually, be adjudicated bankrupts within the true intent and meaning of the Act of Congress relating [57] to bankruptcy, having been heard and duly considered; and it appearing that Gerry Horton Company is a partnership composed of J. D. Althouse and Gerry Horton; that Gerry Horton Farms, a copartnership, is composed of Gerry Horton and J. D. Althouse; that Gerry Horton



Farms, a joint venture, is composed of Kaufman-Brown Potato Company, a copartnership consisting of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse; and that said partnerships of Gerry Horton Company, Gerry Horton Farms, and Gerry Horton Farms, a joint venture, and Gerry Horton, an individual, and J. D. Althouse, an individual, are all involent and that Kaufman-Brown Potato Company, a copartnership, one of the general partners of Gerry Horton Farms, a joint venture, consented to the adjudication in bankruptcy and administration of the estate of Gerry Horton Farms, a joint venture."

2. That Gerry Horton Company, a co-partnership composed of Gerry Horton and J. D. Althouse; Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse; Gerry Horton Farms, a joint venture composed of Kaufman-Brown Potato Company, a copartnership consisting of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a copartnership consisting of Gerry Horton and J. D. Althouse; Gerry Horton, an individual; and J. D. Althouse, an individual, is each a bankrupt under the Act of Congress relating to bankruptcy and each is hereby declared and adjudged a bankrupt accordingly.

3. That Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, a general partner of the joint



venture of Gerry Horton Farms, a joint venture, is individually liable and severally liable with the two partners of Kaufman-Brown Potato Company, Charles H. Kaufman and Albert H. Brown, for the payment of the debts and obligations of Gerry Horton Farms, a joint adventure, together with trustee's fees, attorney's fees for the attorney for the trustee, and referee's fees, expenses and commissions, and all other bankruptcy court expense; and the creditors of said Gerry Horton Farms, a joint venture, to which said partnership of Kaufman-Brown Potato Company, Charles H. Kaufman and Albert H. Brown are liable as above mentioned are as follows, [58] according to the amounts set forth after each creditor's name, to wit:

|                                    |            |
|------------------------------------|------------|
| Rexroth & Rexroth.....             | \$ 282.54  |
| General Petroleum Corporation..... | 36.06      |
| A. H. Karpe.....                   | 169.83     |
| Bakersfield Hardware Co.....       | 50.32      |
| Stroud - Seabrook.....             | 106.58     |
| Wasco Hardware Co.....             | 68.46      |
| Kern County Bank.....              | 2,154.35   |
| Rosedale Warehouse Co.....         | 880.99     |
| Pacific Gas & Electric Co.....     | 2,847.61   |
| King Lumber Co.....                | 364.16     |
| Central Canal Co.....              | 583.40     |
| <hr/>                              |            |
| Total                              | \$7,544.30 |

4. That Wayne Long continue as trustee of said joint venture of Gerry Horton Farms without any additional or other bond than the bonds heretofore given and that he transfer from the bank account of

Gerry Horton Farms, a copartnership, the sum of \$1,087.95 to Gerry Horton Farms, a joint venture.

Dated: May 22nd, 1948.

/s/ WILLIAM A. McGUGIN,

Referee in Bankruptcy.

[Endorsed]: Filed May 22, 1948.

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[Title of District Court and Cause.]

### PETITION FOR REVIEW

The petition of Kaufman-Brown Potato Company, a partnership composed of Charles H. Kaufman and Albert H. Brown, and the said Charles H. Kaufman and Albert H. Brown, individually, respectfully shows:

#### I.

On May 22, 1948, William A. McGugin, a Referee in Bankruptcy of the above entitled court, signed, filed and entered in the above entitled proceeding his findings of fact, conclusions of law and order amending and modifying the order of adjudication in this involuntary bankruptcy proceeding, entered August 15, 1944, to the effect that Gerry Horton Farms, a joint venture composed of Kaufman-Brown Potato Company, a partnership composed of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a partnership composed of

Gerry Horton and J. D. Althouse, is also adjudged a bankrupt; and that the said Kaufman-Brown Potato Company, a partnership, and its two partners, are individually and severally liable for the payment of the debts of the said joint venture and for the payment of the expenses of administration of the estate thereof herein.

## II.

The said order is erroneous for the following reasons:

1. The said order and the findings of fact and conclusions of law upon which it is based are premised upon the theory that joint ventures are subject to bankruptcy, whereas in the National Bankruptcy Act of 1898, as amended, no provision is made for the bankruptcy of joint ventures, at least for a single transaction such as the one here, either as voluntary bankrupts or as involuntary bankrupts.

2. The said order and the findings of fact and conclusions of law upon which it is based are premised upon the assumption that the above named bankrupts and the said creditor engaged in a joint venture for the growing, harvesting and sale of a potato crop, whereas the evidence in this case discloses that no such joint venture existed, in that:

- a. The written contracts between the parties, dated November 16, 1943 and January 22, 1944, by their terms, negative any time to create a joint venture, because they did not contemplate or provide

for any community of interest between the parties with respect to the right to make contracts, incur liabilities, participate in the management of the business, and the like.

b. There was not any joint management or control of the business of growing, harvesting and selling the said crop. Such management and control rested solely with the above named bankrupts. (Rep. Tr., Dec. 8, 1947, p. 83). Nor did the said creditor have anything to do with the buying of supplies or materials, or the hiring or firing of help, and all such matters were handled exclusively by the said bankrupts (Rep. Tr., Dec. 8, 1947, p. 82). [61]

c. The conduct of the parties under the contract negatives a joint venture, in that: (1) the complete control, management and operation of the transaction was solely in the hands of, and solely carried out by the above named bankrupts; and neither the said creditor, nor either of the partners thereof has any part in the operation of such business (Rep. Tr., Dec. 8, 1947, p. 83; May 12-13, 1947, p. 24, 25); (2) the leases to Gerry Horton Farms, where the potatoes were grown, and the equipment used in the transaction belonged solely to the above named bankrupt at all times, and no interest therein was ever transferred to any joint venture or to said creditor (Rep. Tr., Dec. 8, 1947, p. 41, 81); (3) the above named bankrupts were engaged generally in the business of buying, selling and speculating in

potatoes (Rep. Tr., Dec. 8, 1947, p. 54, 63); (4) the money advanced by the said creditor was not deposited to the credit of any joint venture, or to the credit of the above named bankrupts and the said creditor, but solely to the credit of the above named bankrupts, the checks drawn upon the said account were by the above named bankrupts only, and the said creditor did not have any right to draw upon said account for anything (Rep. Tr., Dec. 8, 1947, p. 84); (5) the above named bankrupts sent the said creditor their checks in reduction of the advances made by said creditor to the bankrupts, and on said checks the bankrupts wrote the words "on loan," which checks were subsequently dishonored (Rep. Tr., p. 73, 74 and 75); (6) a crop mortgage was given by the above named bankrupts to the said creditor to secure the repayment of advances made by the said creditor to the said bankrupts in connection with the said transaction (Rep. Tr., May 12-13, 1947, p. 15-19); (7) there were not any business transactions between the above named bankrupts and the said creditor, other than the single transaction here in question, with respect to the potato deal (Rep. Tr., May 12, 13, 1947, p. 24); (8) the above named bankrupts shipped to the said creditor at Chicago a portion of the harvested crop, the said creditor paid the said bankrupts for such shipment, and the money so received by the said bankrupts was deposited to their own account and not to the credit of any joint venture (Rep. Tr., Dec. 8, 1947, p. 83);

(9) all liabilities in connection with the growing, harvesting and selling of the potato crop were incurred by the above named bankrupts; and (10) the said creditor did not make any contracts, incur any liabilities, or participate in the management of the transaction.

3. In view of the foregoing, findings of fact Nos. 3, 6 and 8 are unsupported by the evidence and clearly erroneous in so far as they declare that any joint venture existed between the parties and that petitioners herein are in any way liable by reason of any joint venture, and the conclusions of law based thereon likewise.

4. Even if a joint venture did exist between the parties, such joint venture was not included in the original adjudication, nor was any adjudication asked for any joint venture; and the said Kaufman-Brown Potato Company has not had its day in court, or been given an opportunity to defend against any involuntary petition seeking to have any such joint venture adjudicated a bankrupt and to defeat any such petition by showing that it, even if a party to any such joint venture, is solvent, and that, therefore, any such joint venture cannot be adjudicated a bankrupt in the face of such opposition. The evidence discloses that said Kaufman-Brown Potato Company is and was solvent (Rep. Tr., May 12-13, 1947, p. 36 and 37).

Wherefore, petitioners pray that the said order of the referee be reversed; and for general relief.



Dated: June 1, 1948.

KAUFMAN-BROWN POTATO  
COMPANY,  
a partnership, and CHARLES H. KAUFMAN  
and ALBERT H. BROWN, individually,  
SAMUEL C. COLBY and  
GRAINGER & HUNT.  
By /s/ REUBEN G. HUNT,  
Its attorneys.

State of California,  
County of Los Angeles—ss.

Samuel C. Colby, being first duly sworn, deposes and says: I am one of the attorneys for the within named petitioners and make this verification for and on their behalf, for the reasons that neither of the partners of the petitioner is within the County of Los Angeles, where I and my associates, Grainger and Hunt, have our offices, and the matters stated in the said petition are within my knowledge.

I have read the said petition and know the contents thereof, and the same is true to the best of my knowledge, information and belief.

/s/ SAMUEL C. COLBY,

Subscribed and sworn to before me this 4th day of June, 1948.

[Seal]: /s/ RHAE LICHT,  
Notary Public, Los Angeles County, California.

Affidavit of service by mail attached.

[Endorsed]: Filed June 5, 1948.



[Title of District Court and Cause.]

CERTIFICATE BY REFEREE TO JUDGE ON  
ORDER MODIFYING ADJUDICATION TO  
INCLUDE KAUFMAN-BROWN POTATO  
COMPANY AS ONE OF THE GENERAL  
PARTNERS OF GERRY HORTON FARMS

I, William A. McGugin, is one of the Referees of said court, do hereby certify that in the course of proceedings in said cause before me there was referred to me by Paul J. McCormick as Referee and as Special Master the petition of Wayne Long, Trustee of Gerry Horton Farms, a copartnership, for an order amending modifying and changing the order of adjudication to include Kaufman Brown Potato Company as one of the general partners of said copartnership, and answer was filed by said Kaufman-Brown Potato Company and thereafter hearings were had at the times specified in the findings of fact and the following questions were presented:

1. Was Kaufman-Brown Potato Company a general partner of Gerry Horton Farms in the raising of potatoes in Kern County during the period from November 16, 1943 to July 8, 1944?

2. Did Kaufman-Brown Potato Company (with two other persons) in filing an involuntary petition in bankruptcy against said Gerry Horton Farms, of which it [66] was a partner, consent to the adjudication of said partnership of which it was a member?

My answer to both of the above questions was “yes” and I made appropriate findings, which are among the exhibits attached to this certificate.

### Facts

The undisputed facts are that Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse, entered into two agreements with Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, relative to the raising of potatoes in Kern County, and that copies of the originals of said agreements are attached to trustee's petition which is attached to this certificate. The two contracts are identical except as to amounts and except that on one contract Kaufman-Brown was to receive 40% of the profits or losses and on the other contract Kaufman-Brown was to receive 50% of the profits or losses. The agreements provide as follows:

1. Kaufman-Brown Potato Company purchased a 50% interest in the potato crop to be planted, raised and harvested upon the property and Kaufman-Brown was to pay a consideration for the interest. (paragraphs 1 and 7, 1st page)

2. Kaufman-Brown was to pay 50% of the harvesting cost of the potatoes. (paragraph 3, page 2).

3. The net proceeds or profits obtained from the sale of the potato crop were to be divided between the Partners on a basis of 50% to each. The contract here specifically mentioned the partners. In other places in the contract where it mentions Kauf-

man-Brown is to do something it refers to Kaufman-Brown as second parties, and where Althouse and Horton are to do certain things it refers to them as first parties. (Paragraph 4, page 2). First party was to keep proper books of all expenditures and the books and accounts and all other records were to be open to inspection and access of the second parties (paragraph 5, page 2).

4. Kaufman-Brown was to pay one-half of the losses. (paragraph 7, page 3).

5. Kaufman-Brown had a right to purchase the potatoes and if there was no prevailing market for the sale of potatoes, then Kaufman-Brown was to handle the potatoes through the Terminal Market at Chicago as Agent and they were to be [67] paid a charge of 10c per sack as commission for their services rendered to the partners. Here again the contract refers to as partners when dealing with all of the parties and the contract further provides for equal division on mark ups. (paragraph 8, page 3).

6. Kaufman-Brown had facilities for disposing of potatoes in Chicago and Gerry Horton and J. D. Althouse had equipment and land leased to raise potatoes and Gerry Horton and J. D. Althouse were to devote their best efforts to the raising of the potatoes and to furnish equipment, which they did. (paragraph 9, Page 4).

7. Kaufman-Brown had Gerry Horton and J. D. Althouse execute a promissory note secured by chattel mortgage for advancement and the contract

provides "that said advancement is solely for the security of the performance and conditions herein contained and for no other purpose and Gerry Horton and J. D. Althouse are not to be held liable to Kaufman-Brown for losses occasioned by weather," etc. (Paragraphs 11 and 12, page 4).

Kaufman-Brown maintained their California office in the same room as the office maintained by Gerry Horton and J. D. Althouse. Both Mr. Kaufman and Mr. Brown came to California and at various times inspected the farming operations and its progress and they made certain recommendations as to when the potatoes should be dug. (Page 82, lines 9 to 13 of Gerry Horton's testimony).

Attorney Donald Kendall, representing Kaufman-Brown, secured the election of trustee on September 16, 1944 and acted as attorney for Kaufman-Brown and the trustee during said period until he resigned on the 1st of December, 1945; and during said period of time said Kaufman-Brown did not advise the court that there were two partnerships under the name of Gerry Horton Farms, one of which was not operating and in which Kaufman-Brown Potato Company had no interest, and the other of which was operating and raising potatoes and in which Kaufman-Brown had an interest; and at the hearing before the court on March 21, 1947, the said Donald Kendall, still representing Kaufman-Brown, stipulated that Kaufman-Brown were general partners of Gerry Horton Farms, as follows:

“Mr. Kendall: Your position is, Mr. Johnston, that they are partners only in so far as this crop deal is concerned. [68]

Mr. Johnston: As far as these contracts, they were in partnership on that.

Mr. Kendall: On the general farming crop, no; they were general farming partners as far as potatoes were concerned, yes. I do not think they were liable for the planting of the tomatoes, or for any brokerage transactions that the other company had.”

The petition for review of Kaufman-Brown Potato Company is not true and is incorrect in the following respects, to wit:

1. That I did not find that Gerry Horton Farms, the partnership of which Kaufman-Brown was a partner, was a joint venture and not a partnership, but I found the same was a partnership; but in my findings I designated it in certain places as a joint venture so that the findings would not be confused with the Gerry Horton Farms where Kaufman-Brown was not a partner and which was not then being operated, and my findings were based upon the admitted facts as above stated and other facts as shown by transcripts of testimony, including the testimony by Mr. Kaufman, one of the partners of Kaufman-Brown, in which he testified, on Page 18, Line 15, after reciting that Mr. Brown himself and Gerry Horton had had a conversation as to what was to be done, that in any event, whatever his conversation was it was terminated in the execution of



the written contracts; and the testimony of Gerry Horton, at line 23, page 88, of his testimony, that he furnished the facts regarding the conversations he had with Mr. Brown and Mr. Kaufman to Attorney Chain, who then prepared the contracts according to the facts so related and they were forwarded to Mr. Brown and Mr. Kaufman for their signatures.

2. That I did not also adjudicate the partnership of Gerry Horton Farms, of which Kaufman-Brown Potato Company was a partner, a bankrupt as recited in said petition for review as said partnership was already adjudicated a bankrupt at the request of Kaufman-Brown, but said order modified and corrected said adjudication to include Kaufman-Brown Potato Company as one of the partners.

3. The control, management and operations were carried on by both partners instead of just one partner. The contract allots certain things to be done by one partner and the other things to be done by the other partner. Kaufman-Brown was to handle the sale of the potatoes in Chicago and account to the partnership. [69] Gerry Horton and J. D. Althouse were to furnish equipment and to raise the potatoes and a half interest in the crop being raised was assigned to Kaufman-Brown and Kaufman-Brown was to pay one-half of the losses. Gerry Horton Farms was not engaged in buying, selling and speculating in potatoes as set forth in Lines 11 to 13 of the petition. That was Gerry



Horton Company, which is a separate partnership and has nothing to do with the controversy in question. The money advanced by Kaufman-Brown was not used in any other venture except the potato partnership and it was placed in a different bank in a third checking account (Page 87 Horton's testimony, lines 9 to 17).

The findings of fact and conclusions of law which were prepared by the attorney for the trustee were served upon the bankrupt's attorney and after ten days after service I received letters from the attorneys representing Kaufman-Brown, requesting certain corrections and revisions and thereafter I set aside said findings of fact and ordered prepared new findings of fact and the same were signed by me on the 22nd day of May, 1948 and I entered and signed order based upon said findings of fact and conclusions of law on the 22nd day of May, 1948, and notice of said signing of findings of fact and conclusions of law and said order amending adjudication was served upon the attorneys for Kaufman-Brown on the 25th day of May, 1948. Thereafter, on the 5th day of June, 1948, the said Kaufman-Brown filed its petition for review of said order by the Judge.

Attached to this Certificate are the following documents:

1. Petition for review.
2. Petition of said trustee for order amending, modifying and changing order of adjudication.

3. The answer of Kaufman-Brown to said petition.

4. Transcript of hearing of March 21, 1947.

5. Transcript of evidence of Charles H. Kaufman, together with exhibits mentioned therein.

6. Transcript of evidence of Gerry Horton.

7. Findings of fact and conclusions of law.

8. Order amending Adjudication.

9. Proof of Service of said Findings of Fact and Conclusions of Law and Order.

10. Involuntary petition filed in bankruptcy on the 5th day of August, 1944, signed by Kaufman-Brown Potato Company among others—by reference to original in clerk's office. (copy attached to Item 2 handed up herewith).

11. Certified copy of Order of Adjudication of Gerry Horton Company, a copartnership, J. D. Althouse and Gerry Horton, individually; Gerry Horton Farms, a copartnership. (Attached to Item 2 handed up herewith.)

12. Certified copy of Order Approving Trustee's Bond.

13. Stipulation of counsel agreeing that William A. McGugin act as special master instead and in place of Waldo R. Bergman, and that all testimony previously taken be considered by him.

14. Certified copy of Order to Show Cause.

15. Certified copy of Order of General Reference. (Attached to Item 2 handed up herewith.)

16. Referee's Memorandum of Opinion.

17. This Certificate.

Respectfully submitted this 16th day of July, 1948.

/s/ WILLIAM A. McGUGIN,  
Referee in Bankruptcy.

[Endorsed] Filed July 22, 1948.

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At a stated term, to wit: The April Term. A. D. 1948, of the District Court of the United States of America, for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 25th day of July in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable: CAMPBELL  
E. BEAUMONT,  
District Judge.

[Title of Cause.]

The Court having heretofore taken under submission the petition of Kaufman-Brown Potato Co. for review of the Referee's order, now finds that there is sufficient evidence to support the Referee's findings, and by filing of the petition in involuntary bankruptcy, Kaufman-Brown Potato Co. consented to adjudication. The Court adopts and confirms the Referee's findings as amended, and his order as amended is affirmed. [72]

[Title of District Court and Cause.]

### ORDER

The petition of Kaufman-Brown Potato Company for review of Referee's order determining that Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, came on regularly for hearing before Honorable C. E. Beaumont, a Judge of the above entitled Court, on the 29th day of October, 1948, Samuel C. Colby, and Ruben Hunt of the law firm of Grainger and Hunt appearing as attorneys for Kaufman-Brown Potato Company, and C. W. Johnston of the law firm of Johnston, Baker and Palmer, appearing as attorney for the trustee of said bankrupts, and the case having been argued by the attorneys for the respective parties, and the matter having been submitted, and it appearing to the Court from the Referee's Certificate that the Referee determined that Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, was a general partner of Gerry Horton Farms, but that in the findings of fact, conclusions of law, and order the Referee in some places designated Gerry Horton Farms as a joint venture so that it would not be confused with Gerry Horton Farms, a copartnership, which was not in the business of raising potatoes, and of which Kaufman-Brown Potato Company was not a partner, and the attorney for the trustee at the time of hearing, and in his brief filed requested that the findings of fact, conclusions of

law and order be modified by eliminating and striking out "joint venture," and by inserting in lieu thereof the word "partnership" or other appropriate words so that there would be no doubt or question that said Gerry Horton Farms of which Kaufman-Brown Potato Company was a member, was a partnership; and the court being fully advised finds that the Kaufman-Brown Potato Company, a partnership composed of Charles H. Kaufman and Albert H. Brown, was a general partner of Gerry Horton Farms, a partnership, and that by the filing of the petition in involuntary bankruptcy, Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, consented to adjudication of said Gerry Horton Farms, a copartnership, of which it was a member, and the court adopts and confirms the referees findings of fact, conclusions of law and order, excepting only that they are amended by eliminating the words "joint venture" and inserting in lieu thereof the word "partnership," and by adding additional words to show that it was a partnership so that the finding of fact and conclusions of law will read as amended by the court according to Exhibit "A" attached hereto, and the Judgement will read according to Exhibit "B" attached hereto.

It Is Therefore Adjudged, Ordered and Decreed that the findings of fact, conclusions of law and order of the referee determining that Kaufman-Brown Potato Company, composed of Charles H. Kaufman and Albert H. Brown, was a general partner of Gerry Horton Farms, the partnership en-

gaged in the raising of potatoes, is hereby confirmed, approved and adopted, as amended by this court according to Exhibit "A" and "B" attached hereto.

August 29, 1949.

/s/ C. E. BEAUMONT,  
Judge.

### EXHIBIT "A"

[Title of District Court and Cause.]

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The petition for order amending, modifying, and changing order of adjudication as to Gerry Horton Farms, a copartnership, was regularly referred to Waldo R. Bergman, as Referee in Bankruptcy, and as special master for all purposes and to hear and determine the matters set forth in the trustee's petition and to make findings, conclusions of law, and order thereon. Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, filed answer to the petition of the trustee, and the matter being at issue the same was set for definite hearing by Waldo R. Bergman, and the matter was continued from time to time at the request of Kaufman-Brown Potato Company, and thereafter testimony was introduced on behalf of Kaufman-Brown Potato Company on May 12 and 13, 1947, and the matter was regularly continued from time to time so that Gerry Horton, one of the bankrupts, could be present to testify,



and the undersigned William A. McGugin was appointed as Referee in the place and stead of Waldo R. Bergman, and a stipulation was filed by the respective parties that the undersigned referee could act in the place and stead of Waldo R. Bergman and that all testimony heretofore given [75] before Waldo R. Bergman, as special master and as referee, which had been transcribed by a court reporter, should be read by William A. McGugin as referee and special master and be considered by him the same as if the testimony was given before him, and testimony was produced by the trustee and Kaufman-Brown Potato Company, a copartnership, on the 8th day of December, 1947, and counsel for both sides were orally heard and later presented written briefs to support their respective positions, and the referee having been fully advised in the premises, does hereby make his finding of facts, to wit:

### Findings of Facts

1. That Wayne Long is the duly appointed, qualified and acting trustee of the estates of the above bankrupts.

2. That on the 5th day of August, 1944, an involuntary petition in bankruptcy was filed at the hour of 10:10 o'clock A.M. by Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, and two other persons against the above mentioned bankrupts, and that a true copy of said involuntary petition was attached to the petition of the trustee and marked Exhibit "A," and that an order of

general reference was made by the Honorable Paul J. McCormick, one of the judges of the above entitled Court, which was filed in the above entitled court on the 5th day of August, 1944, at 11:30 o'clock A.M. a true copy of which was attached to the trustee's petition and marked Exhibit "B" and that on August 9, 1944, Waldo R. Bergman, referee in bankruptcy, to whom the above matter was referred by the judge, made an order authorizing Maurice E. Tice, Constable of the Sixth Township, County of Kern, State of California, to serve subpoenas on the alleged bankrupts. That between the 8th day of August, 1944, and the 10th day of August, 1944, service was made upon J. D. Althouse and Gerry Horton individually, and upon said parties as Gerry Horton Farms, a copartnership, and thereafter the referee, on the 15th day of August, 1944, made an order of adjudication of bankruptcy and order for filing of schedules in bankruptcy, a true copy of which order was attached to trustee's petition and marked Exhibit "C," and which order adjudicated Gerry Horton Company, a copartnership composed of Gerry Horton and J. D. Althouse, Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse, and Gerry Horton, an individual, and J. D. Althouse, an [76] individual, as bankrupts.

3. That at the time the involuntary petition in bankruptcy was signed by Kaufman-Brown Potato Company the said Kaufman-Brown Potato Company, and each of its partners, composed of said

persons heretofore mentioned, knew that said Kaufman-Brown Potato Company was a partner with Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse, in the raising of potatoes, under the name of Gerry Horton Farms, a partnership, and knew that there was also a partnership composed of Gerry Horton and J. D. Althouse doing business under the name of Gerry Horton Farms not engaged in the raising of potatoes and not operating during the time potatoes were raised and in which said Kaufman-Brown Potato Company, Charles H. Kaufman and Albert H. Brown were not interested, and knew that said Kaufman-Brown Potato Company was a creditor of said partnership in the sum of \$22,594.82 and was not a creditor against the Gerry Horton Farms, a partnership composed of only Gerry Horton and J. D. Althouse; and the said Kaufman-Brown Potato Company, Charles H. Kaufman and Albert H. Brown each falsely represented, knowing same was false, to the court and creditors by the filing of said bankruptcy petition that Gerry Horton and J. D. Althouse were the only partners in the partnership of raising potatoes, and that the party raising potatoes under the name of Gerry Horton Farms was the partnership composed of only Gerry Horton and J. D. Althouse; and the said Kaufman-Brown Potato Company, Charles H. Kaufman and Albert H. Brown requested and consented that the court adjudicate Gerry Horton Farms, the party who was raising potatoes and who was indebted to Kaufman-Brown Potato Company, a bankrupt.

4. That the attorney for said petitioning creditors was Donald Kendall and that at a meeting of creditors held on the 16th day of September, 1944, the said Donald Kendall, representing said Kaufman-Brown Potato Company and other creditors, secured the election and/or appointment of Wayne Long as trustee, and thereafter said Donald Kendall and Dominic Bianco, at the request of said trustee, were appointed as attorneys for said trustee and acted as attorneys for said trustee until they resigned on or about the first part of December 1945; and during said period of time said Kaufman-Brown Potato Company, Charles H. Kaufman and Albert H. Brown never advised the court that there were two separate [77] partnerships and that Kaufman-Brown Potato Company was a partner of Gerry Horton Farms, the partnership which was raising potatoes, and said Kaufman-Brown Potato Company consented and requested the court to administer the estate of Gerry Horton Farms, a copartnership, who was raising potatoes and who was indebted to Kaufman-Brown Potato Company.

5. That the Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, has its principal place of business at 64 South Watermarket, Chicago, Illinois, and during the year 1944 was doing business in the State of California and had its office and California place of business at 201 Sill Building, Bakersfield, County of Kern, State of California, being the same office as used by all of the above bankrupts.

6. That on or about the 22nd day of January 1944, the said Gerry Horton and J. D. Althouse, as copartners doing business under the firm name and style of Gerry Horton Farms, and Charles H. Kaufman and Albert H. Brown doing business under the firm name and style of Kaufman-Brown Potato Company, entered into a partnership agreement, a true copy of which agreement was attached to the petition of the trustee and marked Exhibit "D," and that said persons agreed to the raising of potatoes upon certain terms and conditions upon certain real property known as "Arvin property" located in the County of Kern, State of California, and particularly described as follows:

Northwest quarter (NW $\frac{1}{4}$ ) of Section Twenty-seven (27), Township Thirty-two (32) South, Range Twenty-nine (29) East, M. D. B. & M., and containing one hundred sixty acres (160), more or less,

and on or about the 16th day of November, 1943, the same persons entered into a partnership agreement, a true copy of which agreement is attached to trustee's petition and marked Exhibit "E," and that said persons agreed to raising of potatoes upon certain terms and conditions upon certain real property known as "Shafter property," located in the County of Kern, State of California, and particularly described as follows:

All of the fractional Southwest quarter (SW $\frac{1}{4}$ ) of Section Eighteen (18), Township Twenty-eight



(28) South, Range Twenty-six (26) East, M. D. B. & M., and containing one hundred eighty-six (186) acres, more or less.

That it was the actual intention of Kaufman-Brown Potato Company, a copartnership, and its partners as heretofore mentioned, and Gerry Horton Farms, [78] a copartnership, and its partners as heretofore mentioned, to form a partnership for the raising of potatoes on the real properties above described and each of the parties had the right and could make contracts and incur liabilities on behalf of said partnership and manage and control the business, and jointly carry on the business of said partnership; and said parties did jointly participate in the management and control of the business of said partnership and that pursuant to the terms of said agreements the said Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a copartnership composed of J. D. Althouse and Gerry Horton, commenced business on November 16, 1943, of the said partnership under the name of Gerry Horton Farms and continued said partnership until August 5, 1944; that Gerry Horton and J. D. Althouse did sell, convey and transfer to said Kaufman-Brown Potato Company a fifty per cent (50%) interest in the potato crop on the Arvin property and a forty per cent (40%) interest in the potato crop on the Shafter property; that each partnership



became a co-owner in said potatoes to be raised for profit by said partnership; that each partner was to pay fifty per cent (50%) of the partnership cost of harvesting the potatoes on the Arvin property and said Kaufman-Brown Potato Company was to pay forty per cent (40%) of said cost on the Shafter property; that the net profits or losses were to be divided between the said partners on the Arvin property and the said Kaufman-Brown Potato Company was to receive forty per cent (40%) of the profit or bear forty per cent (40%) of the losses on the Shafter property, and that during the period heretofore mentioned there was planted, raised and harvested by said partnership, crops of potatoes, and that said partnership, composed of said partnership heretofore mentioned, doing business under the name of Gerry Horton Farms, in the raising of potatoes during the period heretofore mentioned on the above described properties, did purchase goods, wares, merchandise, electricity and water and did borrow money from the herein-after mentioned persons in the amounts set forth after their names, all of which was used for the raising of potatoes on said properties by said partnership for the benefit of said partnership as follows, to wit:

|                                    |           |
|------------------------------------|-----------|
| Rexroth & Rexroth.....             | \$ 282.54 |
| General Petroleum Corporation..... | 36.06     |
| A. H. Karpe.....                   | 169.83    |
| Stroud-Seabrook .....              | 106.58    |
| Bakersfield Hardware Co.....       | 50.32     |

|                                |          |
|--------------------------------|----------|
| Wasco Hardware Co.....         | 68.46    |
| Kern County Bank.....          | 2,154.35 |
| Rosedale Warehouse Co.....     | 880.99   |
| Pacific Gas & Electric Co..... | 2,847.61 |
| King Lumber Co.....            | 364.16   |
| Central Canal Co.....          | 583.40   |

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Total .....\$7,544.30

That all of said amounts are owing to said creditors and have not been paid.

7. That the trustee of Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse, has in his possession cash in the sum of \$1,471.77 being money obtained from the sale of personal property, of \$271.50 for potatoes, \$338.64 for sacks, \$119.13 for pipes, \$85.00 for potato roller, \$325.00 for Killefen carrier and ditcher, \$125.00 for twine, \$40.00 for 200 gallon gas tank, \$150.00 for 1000 gallon gas tank and pump, and \$17.50 for five grease guns, which belongs to Gerry Horton Farms, a partnership composed of Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse, and Kaufman-Brown Potato Company a copartnership composed of Charles H. Kaufman and Albert H. Brown, and that there are no other assets belonging to said partnership and that of said sum above mentioned \$383.22 has been expended in administration costs. That Gerry Horton individually has no assets other than those exempt, and J. D. Althouse individ-

ually has no assets other than those exempt; that Gerry Horton Company, a copartnership composed of Gerry Horton and J. D. Althouse, has cash on hand in the sum of \$1,908.77 and no other assets, and claims filed and approved in the sum of over \$38,092.31, and that Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse, has cash on hand in the sum of \$10,-742.43 and no other assets, and claims filed and approved in the sum of over \$48,530.14; that no fees have been paid to the attorney for the trustee and the former attorneys for the trustee, nor has the trustee been paid in full, nor have referee's fees, expenses and commissions been paid in full.

8. That none of the allegations of Kaufman-Brown Potato Company's answer are true except those allegations herein found to be true.

From the foregoing findings of fact, the referee makes his conclusions of law as follows, to wit: [80]

### Conclusions of Law

1. That by reason of the partnership agreements heretofore mentioned and by the conduct of Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, and each of them, the said copartnership of Kaufman-Brown Potato Company and Charles H. Kaufman and Albert H. Brown each became individually and severally liable for the payment of the debts and obligations mentioned and

described in paragraph 7 of the findings, and trustee fees, attorney fees for trustee's attorney, and all other bankrupt expense in connection with Gerry Horton Farms, the partnership which was raising potatoes.

2. That Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, is a general partner of the partnership of Gerry Horton Farms, a partnership composed of Kaufman-Brown Potato Company, a copartnership consisting of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a copartnership consisting of Gerry Horton and J. D. Althouse.

3. That Charles H. Kaufman, Albert H. Brown and Kaufman-Brown Potato Company, a copartnership composed of said parties, both by reason of their acts and their conduct and in particular by surrendering of the assets of Gerry Horton Farms, a partnership, to the trustee for the administration thereof, and the filing of certain proof of debt claimed against said partnership are now estopped from denying that they did not consent to the adjudication in bankruptcy against said partnership and by the filing of the involuntary petition in bankruptcy consented to adjudication in bankruptcy of said partnership and to the administration of the said partnership property and the assets in bankruptcy proceedings; and accordingly the court herein having acquired jurisdiction of Gerry Hor-

ton Farms, the partnership composed of said Kaufman-Brown Potato Company, a copartnership, and Gerry Horton Farms, a copartnership, has, by virtue of the provisions of the Bankruptcy Act, jurisdiction of the administration of said partnership; and that the order of adjudication should be corrected, amended and modified by adding thereto, in addition to those adjudged bankrupts, "Gerry Horton Farms, a partnership composed of Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse." [81]

4. That Wayne Long be appointed and/or continue as trustee of said partnership, without any additional bond.

Dated: May 22, 1948.

WILLIAM A. MCGUGIN,  
Referee. [82]

EXHIBIT "B"

[Title of District Court and Cause.]

### ORDER

By reason of the law and findings of fact and conclusions of law on file herein,

It Is Ordered and Decreed:

1. That the order of adjudication of bankruptcy dated August 15, 1944, signed by Waldo R. Bergman, Referee in Bankruptcy, be and it is hereby

amended and modified by changing the first paragraph of said order to read as follows:

“At Bakersfield, in the Southern District of California, on the 15th day of August, 1944, before Honorable Waldo R. Bergman, Referee in Bankruptcy, the petition of Kaufman-Brown Potato Company, a copartnership, Earl Cecil and J. Deacy Brown doing business as Rosedale Warehouse Company, a copartnership, and John Lewis praying that Gerry Horton Company and Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse, and Gerry Horton and J. D. Althouse, individually, be adjudicated bankrupts within the true intent and meaning of the Act of Congress relating to bankruptcy, having been [83] heard and duly considered; and it appearing that Gerry Horton Company is a partnership composed of J. D. Althouse and Gerry Horton; that Gerry Horton Farms, a copartnership, not engaged in the raising of potatoes, is composed of Gerry Horton and J. D. Althouse; that Gerry Horton Farms, a partnership engaged in the raising of potatoes, is composed of Kaufman-Brown Potato Company, a copartnership consisting of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse; and that said partnerships of Gerry Horton Company, Gerry Horton Farms, not engaged in the raising of potatoes, and Gerry Horton Farms, a partnership engaged in the raising of potatoes, and Gerry Horton, an individual, and J. D. Althouse, an individual, are all insolvent and



that Kaufman-Brown Potato Company, a copartnership, one of the general partners of Gerry Horton Farms, the partnership engaged in the raising of potatoes, consented to the adjudication in bankruptcy and administration of the estate of Gerry Horton Farms, a partnership.”

2. That Gerry Horton Company, a copartnership composed of Gerry Horton and J. D. Althouse; Gerry Horton Farms, the partnership not engaged in the raising of potatoes composed of Gerry Horton and J. D. Althouse; Gerry Horton Farms, a partnership engaged in the raising of potatoes composed of Kaufman-Brown Potato Company, a copartnership consisting of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a copartnership consisting of Gerry Horton and J. D. Althouse; Gerry Horton, an individual; and J. D. Althouse, an individual, is each a bankrupt under the Act of Congress relating to bankruptcy and each is hereby declared and adjudged a bankrupt accordingly.

3. That Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, a general partner of the partnership of Gerry Horton Farms, the partnership engaged in the raising of potatoes, is individually liable and severally liable with the two partners of Kaufman-Brown Potato Company, Charles H. Kaufman and Albert H. Brown, for the payment of the debts and obligations of said Gerry Horton Farms, a partnership, together with trustee's fees,

attorney's fees for the attorney for the trustee, and referee's fees, expenses and [84] commissions, and all other bankruptcy court expense; and the creditors of said Gerry Horton Farms, a partnership, to which said partnership of Kaufman-Brown Potato Company, Charles H. Kaufman and Albert H. Brown are liable as above mentioned are as follows, according to the amounts set forth after each creditor's name, to wit:

|                                    |            |
|------------------------------------|------------|
| Rexroth & Rexroth.....             | \$ 282.54  |
| General Petroleum Corporation..... | 36.06      |
| A. H. Karpe.....                   | 169.83     |
| Bakersfield Hardware Co.....       | 50.32      |
| Stroud-Seabrook .....              | 106.58     |
| Wasco Hardware Co.....             | 68.46      |
| Kern County Bank.....              | 2,154.35   |
| Rosedale Warehouse Co.....         | 880.99     |
| Pacific Gas & Electric Co.....     | 2,847.61   |
| King Lumber Co.....                | 364.16     |
| Central Canal Co.....              | 583.40     |
| <hr/>                              |            |
| Total .....                        | \$7,544.30 |

4. That Wayne Long continue as trustee of both of said partnerships of Gerry Horton Farms without any additional or other bond than the bonds heretofore given and that he transfer from the bank

account of Gerry Horton Farms, the copartnership not engaged in the raising of potatoes, the sum of \$1,087.95 to Gerry Horton Farms, the partnership engaged in the raising of potatoes.

Dated: May 22, 1948.

WILLIAM A. McGUGIN,  
Referee in Bankruptcy.

Judgment entered Aug. 29, 1949.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Aug. 29, 1949.

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[Title of District Court and Cause.]

KAUFMAN, BROWN POTATO COMPANY,  
Claimant.

PROOF OF UNSECURED DEBT  
AND LETTER OF ATTORNEY

At Bakersfield, California, in said Southern District of California, on the 15th day of September, A.D., 1944, came Philip Banovitz, of . . . . ., in the County of . . . . ., and State of . . . . ., in said District of \* \* \* \* . . . . ., and made oath and says:

Deponent is the authorized agent of Kaufman Brown Potato Company, in the County of Kern, and State of California. This deposition cannot be made by said principal in person because Kaufman Brown Potato Company, is a co-partnership

consisting of Charles H. Kaufman and Albert H. Brown, whose principal place of business and residence is Chicago, Illinois and deponent is duly authorized by his said principal to make this affidavit, and to execute the letter of Attorney incorporated herein and has executed such letter of attorney on behalf of said principal, and it is within his knowledge that the hereinafter mentioned debt was incurred as and for the consideration hereinafter mentioned, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

That the above named bankrupts . . . . ., the person by or against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is justly and truly indebted to said claimant in the sum of \$23,479.79, and the nature and consideration of said debt are as follows: Labor, services, goods, wares and merchandise sold and delivered within two years last past by the claimant, an itemized bill of which, marked "Exhibit A" is hereto annexed, and referred to as a part hereof: That the sum of \$22,594.82 of said amount represents the balance of money due claimant as partial repayment of advances made for the growing of the crop of potatoes; and the sum of \$884.97 represents overdrafts on drafts drawn on claimant by debtors. That all of said sums were represented by checks delivered to claimant, which checks are attached hereto marked Exhibit A and made a part hereof.

That no part of said debt has been paid, no note has been received for said indebtedness nor for any part thereof, nor has any judgment been rendered thereon, except as hereinabove stated; that there are no setoffs or counterclaims to the same; that the purchase price of said goods, wares and merchandise became due on the dates set out on said itemized bill; and that said claimant has not, nor has any other person by claimant's order, or to the knowledge or belief of deponent, or for claimant, had or received any manner of security whatsoever for said debt. Your claimant avers that every part of the obligation herein sought to be proved [87] is free from usury as defined by the laws of the place where the said debt was contracted.

Said claimant hereby constitutes and appoints Donald Kendall claimant's true and lawful attorney in fact to represent said claimant in said matters, with full authority to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings, or at which meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of the undersigned to vote for or against any proposal or resolution that may be then submitted under the

Acts of Congress relating to Bankruptcy; and in the choice of trustee or trustees of the estate of said bankrupt, and for the undersigned to assent to such appointment of trustee, and with like powers to attend and vote in any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due the undersigned under any composition, and for any other purpose whatsoever in the interest of the undersigned, with full power of substitution, and the undersigned does hereby revoke any and all prior powers of attorneys that may have been given by the undersigned.

(Personal signature here only.)

PHILIP BANOVITZ,

Deponent.

Mail all dividends and Notices to the following address: 306 Habermelde Bldg., Bakersfield, California.

Subscribed, sworn to and acknowledged before me this 15th day of September, 1944.

REBA NEATE,

Notary Public in and for the County of Los Angeles,  
State of California.



CERTIFICATE OF TRUE COPY

United States of America,  
Southern District of California,  
Northern Division—ss.

I, William A. McGugin, Referee in Bankruptcy in and for the County of Fresno, State of California, in and for the said district, do hereby certify that the foregoing is a true and correct copy of Proof of Unsecured Debt and Letter of Attorney in the above entitled matter as the same appears of record in the proceedings in said matter now on file in my office.

In Witness Whereof, I have hereunto set my hand this 20th day of July, 1948.

/s/ WILLIAM A. MCGUGIN,

Referee in Bankruptcy. [88]

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[Title of District Court and Cause.]

OBJECTION TO CLAIM OF KAUFMAN-  
BROWN POTATO COMPANY, A CO-PART-  
NERSHIP COMPOSED OF CHARLES H.  
KAUFMAN AND ALBERT H. BROWN

The petition of Wayne Long respectfully shows:

I.

That your petitioner is the duly appointed, qualified, and acting trustee of the above bankrupt estate.

## II.

That on or about the 16th day of September, 1944, Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, filed its Proof of Claim of unsecured debt in the sum of \$23,479.79, but that said Kaufman-Brown Potato Company and each of said partners were partners or joint adventurers with said Bankrupts in the operations of the farming business of said Bankrupts at the time the alleged Indebtedness was incurred, and that said alleged indebtedness is in connection with the farming business.

## III.

That Donald Kendall was named as attorney for said creditor in said Proof of Claim.

Wherefore, petitioner prays that an order to show cause be issued against said creditor, requiring it to appear at a certain date and show cause, if any it has, as to why said claim should not be rejected and disallowed and upon the hearing had thereon, that the Court make its order rejecting and disallowing said claim.

/s/ C. W. JOHNSTON,

Attorneys for Trustee.

WAYNE LONG,

Trustee. [89]

United States of America,  
Southern District of California,  
Northern Division,  
County of Kern—ss.

C. W. Johnston, being duly sworn, says That he is Attorney for the Trustee in the foregoing entitled matter; that he has read the foregoing Objection to Claim and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief and as to those matters, that he believes it to be true and that the reason that this verification is made by the attorney instead of the trustee is that the trustee is not in the County of Kern at the time this verification is made.

/s/ C. W. JOHNSTON.

Subscribed and sworn to before me this 24th day of Oct., 1946.

[Seal] /s/ MILDRED UHLER,  
Notary Public in and for the County of Kern, State  
of California.

[Endorsed]: Filed Oct. 24, 1946. [90]

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[Title of District Court and Cause.]

### ORDER TO SHOW CAUSE

The trustee of the above bankrupt having filed a petition that the claim of Kaufman-Brown Potato Company in the sum of \$23,479.79, which claim

was filed as unsecured claim, be rejected and disallowed for the reasons set forth in said petition; and it appearing that there are good and sufficient reasons therefor,

Therefore It Is Ordered that Kaufman-Brown Potato Company, a co-partnership composed of Charles H. Kaufman and Albert H. Brown, be ordered to appear before the undersigned Referee at his office, 130 Morgan Building, Bakersfield, Kern County, California, on the 9th day of November, 1946, at the hour of 10 a.m. to show cause, if any it has, why the above mentioned claim should not be rejected and disallowed.

It Is Further Ordered that a copy of this order together with a copy of the petition be served upon said alleged creditor or his attorney of record at least five (5) days prior to the date set for hearing, or that same may be served by registered mail with return receipt, showing that the same was delivered five (5) days prior to the date set for hearing.

Dated: October 24, 1946.

/s/ WALDO R. BERGMAN,  
Referee in Bankruptcy.

Receipt of copy acknowledged.

[Endorsed]: Filed Oct. 28, 1946. [91]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF  
LAW AS TO KAUFMAN-BROWN POTATO  
COMPANY CLAIM

Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, filed a claim of unsecured debt in the sum of \$23,479.79 in the above bankruptcy proceedings and the trustee having filed objection to the claim that said Kaufman-Brown Potato Company was a joint venturer with Gerry Horton Farms in the operation of the farming business in the raising of potatoes at the time the alleged indebtedness was incurred, and that said alleged indebtedness was in connection with the growing of potatoes by said joint venture, and the matter having been set for hearing on the 9th day of November, 1946, and the matter continued from time to time at the request of Kaufman-Brown Potato Company and hearings were had at various times and final hearing was had before the referee on the 8th day of December, 1947, Kaufman-Brown Potato Company being represented by Donald Kendall and the trustee in bankruptcy being represented by C. W. Johnston, and evidence having been introduced, both oral and documentary, and the referee being fully advised in the premises does hereby make his findings [92] of fact, to wit:

## Findings of Fact

1. That Wayne Long is the duly appointed, qualified and acting trustee of the bankrupt estates of Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse; Gerry Horton Company, a copartnership composed of Gerry Horton and J. D. Althouse; and Gerry Horton Farms, a joint venture composed of Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse, and Kaufman-Brown Potato Company, a copartnership consisting of Charles H. Kaufman and Albert H. Brown.

2. That on or about the 16th day of September, 1944, Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, filed its proof of claim of unsecured debt in the sum of \$23,479.79 in the above bankruptcy proceedings.

3. That said Kaufman-Brown Potato Company, a copartnership, advanced the sum of \$884.97, and no more, to Gerry Horton Company, a copartnership, and that said sum has not been repaid and is still owing to said Kaufman-Brown Potato Company by Gerry Horton Company.

4. That Kaufman-Brown Potato Company, a copartnership, advanced the sum of \$22,594.82 to Gerry Horton Farms, a joint venture composed of Gerry Horton Farms, a copartnership, and Kaufman Brown Potato Company, a copartnership, and



the said sum has not been paid and said sum is still due and owing by said joint venture to said Kaufman-Brown Potato Company; and that said sum of money was used by said joint venture in the raising of potatoes by said joint venture and that said sum was not advanced or loaned to Gerry Horton Farms, a copartnership composed only of J. D. Althouse and Gerry Horton.

From the foregoing findings of fact the referee makes his conclusions of law as follows, to wit:

### Conclusions of Law

1. That Gerry Horton Company, a copartnership, is indebted to Kaufman-Brown Potato Company, a copartnership, in the sum of \$884.97 and the claim of Kaufman-Brown Potato Company should be allowed against the bankrupt estate of Gerry [93] Horton Company for the sum of \$884.97.

2. That Gerry Horton Farms, a copartnership composed of only Gerry Horton and J. D. Althouse, is not indebted to Kaufman-Brown Potato Company, a copartnership, in any sum or at all, and claim of Kaufman-Brown Potato Company should be denied as against said copartnership.

3. That Gerry Horton Farms, a joint venture composed of Kaufman-Brown Potato Company, a copartnership, and Gerry Horton Farms, a copartnership, is indebted to Kaufman-Brown Potato Company in the sum of \$22,594.82; and that said

Kaufman-Brown Potato, a copartnership, is a general partner of said Gerry Horton Farms, a joint venture, bankrupt, and said claim should be disallowed against Gerry Horton Farms, a joint venture, until all other creditors have been paid in full and all expenses of administration have been paid in full.

Dated: May 22nd, 1948.

/s/ WILLIAM A. McGUGIN,  
Referee.

[Endorsed]: Filed May 22, 1948. [94]

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[Title of District Court and Cause.]

### ORDER

By reason of the law and the findings of fact and conclusions of law on file herein,

It Is Ordered:

1. That the claim of Kaufman-Brown Potato Company be allowed against Gerry Horton Company, a copartnership, for the sum of \$884.97 and for no other sum.

2. That the claim of Kaufman-Brown Potato Company be disallowed against Gerry Horton Farms, a copartnership composed only of J. D. Althouse and Gerry Horton.

3. That the balance of said claim of Kaufman-Brown Potato Company, being \$22,594.82, be dis-

allowed against Gerry Horton Farms, a joint venture composed of Gerry Horton Farms, a co-partnership, and Kaufman-Brown Potato Company, a copartnership, until all other creditors of said joint venture have been paid in full and all expenses of administration of said joint venture have been paid in full.

Dated: May 22nd, 1948.

/s/ WILLIAM A. McGUGIN,  
Referee.

[Endorsed]: Filed May 22, 1948. [95]

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[Title of District Court and Cause.]

### PETITION FOR REVIEW

The petition of Kaufman-Brown Potato Company, a partnership composed of Charles H. Kaufman and Albert H. Brown, respectfully shows:

#### I.

On May 22, 1948, William A. McGugin, a Referee in Bankruptcy of the above entitled court, signed, filed and entered in the above entitled proceeding his findings of fact, conclusions of law and order allowing the general unsecured claim for \$23,479.79 filed herein by said Kaufman-Brown Potato Company, a creditor of the above named bankrupts, for \$884.97 only, and disallowed the balance of said claim against Gerry Horton Farms, a joint venture alleged to be composed of the above named bank-

rupts and the said creditor, until all other creditors of the said alleged joint venture, and all [96] expenses of administration of the said joint venture have been paid in full.

## II.

The said order is erroneous for the following reasons:

1. The said order and the findings of fact and conclusions of law upon which it is based are premised upon the theory that joint ventures are subject to bankruptcy, whereas in the National Bankruptcy Act of 1898, as amended, no provision is made for the bankruptcy of joint ventures, at least for a single transaction such as the one here, either as voluntary bankrupts or as involuntary bankrupts.

2. The said order and the findings of fact and conclusions of law upon which it is based are premised upon the assumption that the above named bankrupts and the said creditor engaged in a joint venture for the growing, harvesting and sale of a potato crop, whereas the evidence in this case discloses that no such joint venture existed, in that:

- a. The written contracts between the parties, dated November 16, 1943 and January 22, 1944, by their terms, negative any time to create a joint venture, because they did not contemplate or provide for any community of interest between the parties with respect to the right to make contracts,

incur liabilities, participate in the management of the business, and the like.

b. There was not any joint management or control of the business of growing, harvesting and selling the said crop. Such management and control rested solely with the above named bankrupts (Rep. Tr., Dec. 8, 1947, p. 83). Nor did the said creditor have anything to do with the buying of supplies or materials, or the hiring or firing of help, and all such matters were handled exclusively by the said bankrupts (Rep. Tr., Dec. 8, 1947, p. 82).

c. The conduct of the parties under the contract negatives a joint venture, in that: (1) the complete control, [97] management and operation of the transaction was solely in the hands of, and solely carried out by the above named bankrupts; and neither the said creditor, nor either of the partners thereof had any part in the operation of such business (Rep. Tr., Dec. 8, 1947, p. 83; May 12-13, 1947, p. 24, 25); (2) the leases to Gerry Horton Farms, where the potatoes were grown, and the equipment used in the transaction belonged solely to the above named bankrupt at all times, and no interest therein was ever transferred to any joint venture or to said creditor (Rep. Tr., Dec. 8, 1947, p. 41, 81); (3) the above named bankrupts were engaged generally in the business of buying, selling and speculating in potatoes (Rep. Tr., Dec. 8, 1947, p. 54, 63); (4) the money advanced by the said creditor was not deposited to the credit of any joint venture, or to the credit of the above named bankrupts and the said creditor, but solely to the

credit of the above named bankrupts, the checks drawn upon the said account were by the above named bankrupts only, and the said creditor did not have any right to draw upon said account for anything (Rep. Tr., Dec. 8, 1947, p. 84); (5) the above named bankrupts sent the said creditor their checks in reduction of the advances made by said creditor to the bankrupts, and on said checks the bankrupts wrote the words "on loan," which checks were subsequently dishonored (Rep. Tr., p. 73, 74 and 75); (6) a crop mortgage was given by the above named bankrupts to the said creditor to secure the repayment of advances made by the said creditor to the said bankrupts in connection with the said transaction (Rep. Tr., May 12-13, 1947, p. 15-19); (7) there were not any business transactions between the above named bankrupts and the said creditor, other than the single transaction here in question with respect to the potato deal (Rep. Tr., May 12-13, 1947, p. 24); (8) the above named bankrupts shipped to the said creditor at Chicago a portion of the harvested crop, the said creditor paid the said bankrupts for such shipment, and the money so received by the said bankrupts was deposited to their own account and not to [98] the credit of any joint venture (Rep. Tr., Dec. 8, 1947, p. 83); (9) all liabilities in connection with the growing, harvesting and selling of the potato crop were incurred by the above named bankrupts; and (10) the said creditor did not make any contracts, incur any liabilities, or participate in the management of the transaction.



3. In view of the foregoing, findings of fact Nos. 3 and 4 are unsupported by the evidence and clearly erroneous; and the conclusions of law likewise.

Wherefore, petitioner prays that said order be reversed and that the said referee be instructed to enter an order allowing the said creditor's claim for \$23,479.79 against the estates of the above named bankrupts for the full amount thereof; and for general relief.

Dated: June 1, 1948.

KAUFMAN-BROWN  
POTATO COMPANY,  
a partnership, by  
SAMUEL C. COLBY and  
GRAINGER & HUNT,  
/s/ REUBEN G. HUNT,  
Its Attorneys.

State of California,  
County of Los Angeles—ss.

Samuel C. Colby, being first duly sworn, deposes and says: I am one of the attorneys for the within named petitioner and make this verification for and on its behalf, for the reasons that neither of the partners of the petitioner is within the County of Los Angeles, where I and my associates, Grainger and Hunt, have our offices, and the matters stated in the said petition are within my knowledge.

I have read the said petition and know the contents thereof, and the same is true to the best of my knowledge, information and belief.

/s/ SAMUEL C. COLBY.

Subscribed and sworn to before me this 4th day of June, 1948.

[Seal]     /s/ RHAE LICHT,  
Notary Public, Los Angeles County, Calif.

Affidavit of service by mail attached.

[Endorsed]: Filed June 5, 1948. [99]

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[Title of District Court and Cause.]

CERTIFICATE BY REFEREE TO JUDGE ON  
ORDER DISALLOWING CLAIM OF  
KAUFMAN-BROWN POTATO COMPANY  
IN PART

I, William A. McGugin, Referee in Bankruptcy in charge of the above entitled proceedings, in response to the Petition for Review filed by the Kaufman-Brown Potato Company from an order disallowing the claim of said Kaufman-Brown Potato Company except for the sum of \$884.97 in this bankruptcy proceedings made by me on the 22nd day of May, 1948, do hereby certify to the Judge as follows:

That a hearing was had upon an order to show cause to determine whether or not Kaufman-Brown Potato Company was a general partner of Gerry Horton Farms in the raising of potatoes in Kern County during the period from November 16, 1943 to July 8, 1944.

Is the claim of Kaufman-Brown Potato Company on file in this proceedings a proper and valid claim against the Gerry Horton Farms partnership? [101]

I further certify that a petition in involuntary bankruptcy was filed against the bankrupts named in the title herein by three creditors, one of whom was Kaufman-Potato Company; that the proceedings was referred to Waldo R. Bergman, as Referee and Special Master; that thereafter I replaced Waldo R. Bergman in such capacity upon my appointment on July 1, 1947; that a stipulation was entered into by counsel for the parties in this proceedings agreeing that the evidence heard by Mr. Bergman and written up in transcript could be read by myself and considered as evidence herein; that further hearing was held on various continued dates and that on May 22, 1948 I made and entered an order holding that Kaufman-Brown Potato Company, a copartnership, was a general partner of Gerry Horton Farms, a copartnership; that the facts and record of proceedings in the hearing on the said question of copartnership is now before your Honor on a companion Certificate on Review; that the question involved in this certificate necessarily depends upon the question in the partnership certificate.

That since Kaufman-Brown Potato Company was held to be a general partner of Gerry Horton Farms the claim of Kaufman-Brown Potato Company against the partnership of Gerry Horton Farms

was necessarily held to be subsequent in order to claims of all other creditors.

That reference is hereby made to the certificate filed in company herewith for the further facts, proceedings and references in this matter.

The questions for the Court to determine are as follows:

1. Was the order of the Referee partially disallowing the claim of Kaufman-Brown Potato Company proper considering the facts and the premises and that Kaufman-Brown Potato [102] Company was a copartner of the bankrupts involved?

I hereby certify to the District Judge the following documents:

1. Petition for Review.
2. Certified copy of Claim of Kaufman-Brown Potato Co.
3. Objection of Trustee to Claim of Kaufman-Brown Potato Co.
4. Order to Show Cause.
5. Transcript of hearing of March 21, 1947.
6. Transcript of evidence of Charles H. Kaufman.
6. Transcript of evidence of Gerry Horton.
7. Findings of Fact and Conclusions of Law.
8. Order partially disallowing Claim.
9. All documents handed up with companion certificate on review.

10. Involuntary petition filed in bankruptcy on the 5th day of August, 1944, signed by Kaufman-Brown Potato Company among others—by reference to original in clerk's office.

11. Certified copy of Adjudication of Gerry Horton Company, a copartnership, J. D. Althouse and Gerry Horton, individually; Gerry Horton Farms, a copartnership. (Attached to Item 2 of companion certificate handed up herewith.)

12. Certified copy of Order Approving Trustee's Bond. (Attached to documents handed up with companion certificate.)

13. Stipulation of counsel agreeing that William A. McGugin act as special master instead and in place of Waldo R. Bergman, and that all testimony previously taken be considered by him. (Attached to documents handed up with companion certificate.)

14. Certified copy of Order of General Reference. (Attached to Item 2 of companion certificate handed up herewith.) [103]

16. Referee's Memorandum of Opinion. (Attached to documents handed up with companion certificate.)

17. This Certificate.

Respectfully submitted this 16th day of July, 1948.

/s/ WILLIAM A. MCGUGIN,  
Referee in Bankruptcy.

[Endorsed]: Filed July 22, 1948. [104]

In the District Court of the United States, for  
the Southern District of California, Northern  
Division.

No. 6180

In the Matter of:

GERRY HORTON and J. D. ALTHOUSE, doing  
business as GERRY HORTON COMPANY, a  
copartnership, GERRY HORTON and J. D.  
ALTHOUSE, doing business as GERRY HOR-  
TON FARMS, a copartnership, GERRY HOR-  
TON, an individual, and J. D. ALTHOUSE,  
and individual,

Bankrupts.

### ORDER

The petition of Kaufman-Brown Potato Com-  
pany for review of Referee's order disallowing the  
claim of Kaufman-Brown Potato Company, a co-  
partnership, in the sum of \$22,594.82 against Gerry  
Horton Farms, the partnership, which was in the  
business of raising potatoes and of which said  
Kaufman-Brown Potato Company was a member,  
came on regularly for hearing before the Honorable  
C. E. Beaumont, Judge of the above entitled Court,  
on the 29th day of October, 1948; Samuel C. Colby  
and Reuben G. Hunt of the Law Firm of Grainger  
and Hunt, appearing as Attorneys for Kaufman-  
Brown Potato Company, and C. W. Johnston, of  
the Law Firm of Johnston, Baker and Palmer,  
appearing as Attorney for the trustee of said bank-



rupts, and the matter having been argued by the attorneys for the respective parties, and the matter having been submitted, and it appearing to the Court from the evidence that Kaufman-Brown Potato Company was a partner of Gerry Horton Farms, a copartnership, in the business of raising potatoes, and that said sum of money was loaned by said Kaufman-Brown Potato Company to Gerry Horton Farms, the [105] partnership, in the business of raising potatoes, composed of Gerry Horton Farms, a copartnership, not then in the business of raising potatoes, and Kaufman-Brown Potato Company, a copartnership, and that the Referee, in his findings of fact and conclusions of law and order, designated Gerry Horton Farms as a "joint venture" so that it would not be confused with Gerry Horton Farms, the copartnership, which was not in the business of raising potatoes, and of which Kaufman-Brown Potato Company was not a partner; and the Attorney for the trustee at the time of hearing having requested that the findings of fact and conclusions of law and order be modified by eliminating the words "joint venture" and inserting in lieu thereof the word "partnership" or other appropriate words so that there would be no doubt or question that said Gerry Horton Farms of which Kaufman-Brown Potato Company was a member, was a partnership; and the Court adopts and confirms the Referee's findings of fact and conclusions of law and order, excepting only that they are amended by eliminating the words "joint

venture” and inserting in lieu thereof the word “partnership,” so that the findings of fact and conclusions of law will read as amended by the Court according to Exhibit “A” attached hereto, and the judgment order will read according to Exhibit “B” attached hereto.

It Is Therefore Ordered, Adjudged and Decreed that the findings of fact and conclusions of law and order of the Referee determining that Kaufman-Brown Potato Company, composed of Charles H. Kaufman and Albert H. Brown, claim for \$22,594.82 against Gerry Horton Farms, the partnership, engaged in the business of raising potatoes, be denied until all creditors had been paid is hereby confirmed, approved and adopted, as amended, by this Court according to Exhibits “A” and “B” attached hereto.

Dated: August 29, 1949.

/s/ C. E. BEAUMONT,  
Judge. [106]

### EXHIBIT “A”

[Title of District Court and Cause.]

### FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO KAUFMAN-BROWN PO- TATO COMPANY CLAIM

Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, filed a claim of unsecured debt in the

sum of \$23,479.79 in the above bankruptcy proceedings and the trustee having filed objection to the claim on the ground that said Kaufman-Brown Potato Company was a partner with Gerry Horton Farms in the operation of the farming business in the raising of potatoes at the time the alleged indebtedness was incurred, and that said alleged indebtedness was in connection with the growing of potatoes by said partnership and the matter having been set for hearing on the 9th day of November, 1946, and the matter continued from time to time at the request of Kaufman-Brown Potato Company and hearings were had at various times and final hearing was had before the referee on the 8th day of December, 1947, Kaufman-Brown Potato Company being represented by Donald Kendall and the trustee in bankruptcy being represented by C. W. Johnston, and evidence having been introduced, both oral and documentary, and the referee being fully advised in the premises does hereby make his findings of fact, to wit: [107]

### Findings of Fact

1. That Wayne Long is the duly appointed, qualified and acting trustee of the bankrupt estates of Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse; Gerry Horton Company is a copartnership composed of Gerry Horton and J. D. Althouse; and Gerry Horton Farms, is a partnership composed of Gerry Horton Farms, a copartnership composed of Gerry Horton and J. D. Althouse, and Kaufman-Brown

Potato Company, a copartnership consisting of Charles H. Kaufman and Albert H. Brown.

2. That on or about the 16th day of September, 1944, Kaufman-Brown Potato Company, a copartnership composed of Charles H. Kaufman and Albert H. Brown, filed its proof of claim of unsecured debt in the sum of \$23,479.79 in the above bankruptcy proceedings.

3. That said Kaufman-Brown Potato Company, a copartnership, advanced the sum of \$884.97, and no more, to Gerry Horton Company, a copartnership, and that said sum has not been repaid and is still owing to said Kaufman-Brown Potato Company by Gerry Horton Company.

4. That Kaufman-Brown Potato Company, a copartnership, advanced the sum of \$22,594.82 to Gerry Horton Farms, the partnership composed of Gerry Horton Farms, a copartnership, and Kaufman-Brown Potato Company, a copartnership, and the said sum has not been paid and said sum is still due and owing by said partnership to said Kaufman-Brown Potato Company; and that said sum of money was used by said partnership in the raising of potatoes by said partnership and that said sum was not advanced or loaned to Gerry Horton Farms, the copartnership composed only of J. D. Althouse and Gerry Horton.

From the foregoing findings of fact the referee makes his conclusions of law as follows, to wit:

Conclusions of Law

1. That Gerry Horton Company, a copartnership, is indebted to Kaufman-Brown Potato Company, a copartnership, in the sum of \$884.97 and the claim of Kaufman-Brown Potato Company should be allowed against the bankrupt estate of Gerry Horton Company for the sum of \$884.97.

2. That Gerry Horton Farms, the copartnership composed of only Gerry Horton and J. D. Althouse, is not indebted to Kaufman-Brown Potato Company, a copartnership, in any sum or at all, and claim of Kaufman-Brown Potato Company should be denied as against said copartnership.

3. That Gerry Horton Farms, the partnership composed of Kaufman-Brown Potato Company, a copartnership, and Gerry Horton Farms, a copartnership, is indebted to Kaufman-Brown Potato Company in the sum of \$22,594.82; and that said Kaufman-Brown Potato Company, a copartnership, is a general partner of said Gerry Horton Farms, the said partnership, and said claim should be disallowed against said Gerry Horton Farms, a partnership, until all other creditors have been paid in full and all expenses of administration have been paid in full.

Dated: May 22, 1948.

WILLIAM A. McGUGIN,  
Referee. [109]

## EXHIBIT "B"

[Title of District Court and Cause.]

## ORDER

By reason of the law and the findings of fact and conclusions of law on file herein,

It Is Ordered:

1. That the claim of Kaufman-Brown Potato Company be allowed against Gerry Horton Company, a copartnership, for the sum of \$884.97 and for no other sum.

2. That the claim of Kaufman-Brown Potato Company be disallowed against Gerry Horton Farms, the copartnership composed only of J. D. Althouse and Gerry Horton.

3. That the balance of said claim of Kaufman-Brown Potato Company, being \$22,594.82, be disallowed against Gerry Horton Farms, the partnership composed of Gerry Horton Farms, a copartnership, and Kaufman-Brown Potato Company, a copartnership, until all other creditors of said partnership have been paid in full and all expenses of administration of said partnership have been paid in full.

Dated: May 22, 1948.

WILLIAM A. McGUGIN,  
Referee. [110]

Affidavit of service by mail attached.

Judgement entered Aug. 29, 1949.

[Endorsed]: Filed Aug. 29, 1949. [111]



[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Hon. Campbell E. Beaumont, Judge of the  
United States District Court:

To Wayne Long, as Trustee in Bankruptcy of the  
Estates of the Above Named Bankrupts, and  
to His Attorneys of Record, Harvey, Johnston,  
Baker and Palmer, and C. W. Johnston,  
Esquire: and to Edmund L. Smith, Clerk of  
the District Court:

You and Each of You Will Please Take Notice,  
and Notice Is Hereby Given that Kaufman-Brown  
Potato Company, a partnership composed of Charles  
H. Kaufman and Albert H. Brown, and the said  
Charles H. Kaufman and said Albert H. Brown,  
and each of them hereby appeal to the United States  
Court of Appeals for the Ninth Circuit, from that  
order, final judgment and decree and the whole  
thereof filed, docketed and entered in the above en-  
titled matter on the 25th day of July, 1949, and  
reading as follows: [112]

“The Court having heretofore taken under sub-  
mission the petition of Kaufman-Brown Potato  
Company for review of the Referee’s order, now  
finds that there is sufficient evidence to support the  
Referee’s findings, and by filing of the petition in  
involuntary bankruptcy, Kaufman-Brown Potato  
Company consented to adjudication. The Court

adopts and confirms the Referee's findings as amended, and his order as amended is affirmed."

Dated this 24th day of August, 1949.

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellants.

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[Endorsed]: Aug. 24, 1949. [113]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Honorable Campbell E. Beaumont, Judge  
of the United States District Court:

To Wayne Long, as Trustee in Bankruptcy of the  
Estates of the Above Named Bankrupts, and  
to His Attorneys of Record, Harvey, Johnston,  
Baker and Palmer, and C. W. Johnson,  
Esquire, and to Edmund L. Smith, Clerk of  
the Said District Court:

You and Each of You Will Please Take Notice  
and Notice Is Hereby Given that Kaufman-Brown  
Potato Company, a partnership composed of Charles  
H. Kaufman and Albert H. Brown, and the said  
Charles H. Kaufman and said Albert H. Brown,  
and each of them hereby appeal to the United States  
Court of Appeals for the Ninth Circuit from that  
Order, Final Judgment and Decree, and the whole  
thereof, filed, docketed and entered in the above en-  
titled matter on the 29th day of August, 1949, which  
said order, final judgment and decree was on said

day filed and entered in Judgment Book 5, at page 258 of the files and records [114] of the above entitled Court, and which said order determined that findings, conclusions and order of Referee determining Kaufman-Brown Potato Company was a general partner of Gerry Horton Farms be confirmed, approved and adopted as amended by the Court, according to Exhibits "A" and "B" attached to said order.

Dated this 22nd day of September, 1949.

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellants.

[Endorsed]: Sept. 22, 1949. [115]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Honorable Campbell E. Beaumont, Judge  
of the United States District Court:

To Wayne Long, as Trustee in Bankruptcy of the  
Estates of the Above Named Bankrupts, and  
to His Attorneys of Record, Harvey, Johnston,  
Baker and Palmer, and C. W. Johnson,  
Esquire, and to Edmund L. Smith, Clerk of  
the Said District Court:

You and Each of You Will Please Take Notice  
and Notice Is Hereby Given that Kaufman-Brown  
Potato Company, a partnership composed of Charles  
H. Kaufman and Albert H. Brown, and the said  
Charles H. Kaufman and said Albert H. Brown,

and each of them, hereby appeal to the United States Court of Appeals for the Ninth Circuit from that Order, Final Judgment and Decree, and the whole thereof, filed, docketed and entered in the above entitled matter on the 29th day of August, [116] 1949, which said order, final judgment and decree was on said day filed and entered in Judgment Book 5, at Page 271, and which said order determined that Kaufman-Brown Potato Company's claim for \$22,594.82 against Gerry Horton Farms be denied until all creditors had been paid be confirmed and adopted as amended by Court, according to Exhibits "A" and "B" attached to said order.

Dated this 22nd day of September, 1949.

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellants.

[Endorsed]: Filed Sept. 22, 1949. [117]

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[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH  
APPELLANT WILL RELY UPON AP-  
PEAL FROM JUDGMENT ENTERED IN  
JUDGMENT BOOK 5, PAGE 258 (APPEAL  
FROM ORDER RE ADJUDICATION IN  
BANKRUPTCY).

Pursuant to Rule 75-d of Rules of Civil Procedure, the appellants make the following concise statement of points upon which they intend to rely upon this appeal.

I.

The Order, Judgment and Decree of the Court was erroneous in that it decreed that Kaufman-Brown Potato Company was a general partner of Gerry Horton Farms, a partnership engaged in the raising of potatoes, though the evidence was insufficient to prove it was ever such a partner and, on the contrary, established that it was not a partner.

II.

The Order, Judgment and Decree of the Court in adjudicating Gerry Horton Farms, a partnership engaged in the raising of potatoes, composed of Kaufman-Brown Potato Company, a co-partnership consisting [118] of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a co-partnership composed of Gerry Horton and J. D. Althouse, bankrupt, was erroneous in that said Kaufman-Brown Potato Company was not a co-partner and also in that neither the proceedings had nor the evidence adduced permitted or justified such Order.

Respectfully submitted,

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed Sept. 29, 1949. [119]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH  
APPELLANT WILL RELY UPON AP-  
PEAL FROM JUDGMENT ENTERED IN  
JUDGMENT BOOK 5, PAGE 271 (APPEAL  
RE DISALLOWANCE OF CLAIM).

Pursuant to Rule 75-D of Rules of Civil Procedure, the appellants make the following concise statement of points upon which they intend to rely upon this appeal.

I.

The Order, Judgment and Decree of the Court was erroneous in that it decreed that Kaufman-Brown Potato Company was a general partner of Gerry Horton Farms, a partnership engaged in the raising of potatoes, though the evidence was insufficient to prove it was ever such a partner and, on the contrary, established that it was not a partner.

II.

The Order, Judgment and Decree of the Court in disallowing the major portion of the claim of Kaufman-Brown Potato Company, filed in the above-entitled Bankruptcy proceedings, was erroneous in that [121] Kaufman-Brown Potato Company was not a co-partner of Gerry Horton Farms and was improperly adjudged to be a co-partner in



an alleged co-partnership erroneously adjudged to be a bankrupt.

Respectfully submitted,

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed Sept. 29, 1949. [122]

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[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH  
APPELLANTS WILL RELY UPON AP-  
PEAL FILED AUGUST 24, 1949.

Pursuant to Rule 75-d of Rules of Civil Procedure, the appellants make the following concise statement of points upon which they intend to rely upon this appeal.

I.

The Order, Judgment and Decree of the Court was erroneous in that it decreed that Kaufman-Brown Potato Company was a general partner of Gerry Horton Farms, a partnership engaged in the raising of potatoes, though the evidence was insufficient to prove it was ever such a partner and, on the contrary, established that it was not a partner.

II.

The Order, Judgment and Decree of the Court in disallowing the major portion of the claim of Kaufman-Brown Potato Company, filed in the

above-entitled Bankruptcy proceeding, was erroneous in [124] that Kaufman-Brown Potato Company was not a co-partner of Gerry Horton Farms, and was improperly adjudged to be a co-partner in an alleged co-partnership erroneously adjudged to be a bankrupt.

### III.

The Order, Judgment and Decree of the Court in adjudicating Gerry Horton Farms, a partnership engaged in the raising of potatoes, composed of Kaufman-Brown Potato Company, a co-partnership consisting of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, a co-partnership composed of Gerry Horton and J. D. Althouse, bankrupt, was erroneous in that said Kaufman-Brown Potato Company was not a co-partner and also in that neither the proceedings had nor the evidence adduced permitted or justified such Order.

Respectfully submitted,

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed Sept. 29, 1949. [125]

[Title of District Court and Cause.]

EXTENSION OF TIME FOR FILING RECORD ON APPEAL AND DOCKETING THE APPEAL.

It appearing to the Court that Kaufman-Brown Potato Company, a partnership composed of Charles H. Kaufman and Albert H. Brown, and the said Charles H. Kaufman and Albert H. Brown, are appellants in each of the following appeals, to wit:

(a) Appeal filed on August 24, 1949 from Order, Decree and Final Judgment filed, docketed and entered in the above-entitled matter on the 25th day of July, 1949;

(b) Appeal filed on September 22, 1949 from Order, Decree and Final Judgment filed, docketed and entered in the above-entitled matter on the 29th day of August, 1949, which said Order, Decree and Judgment was on said day filed and entered in Judgment Book 5, at page 258 of the files and records of the above-entitled court; [127]

(c) Appeal filed on September 22, 1949 from Order, Decree and Final Judgment filed, docketed and entered in the above-entitled matter on the 29th day of August, 1949, which said Order, Decree and Final Judgment was on said day filed and entered in Judgment Book 5 at page 271 of the files and records of the above-entitled Court.

And it further appearing to the Court that said appellants in their designation of portions of the record, proceedings and evidence to be contained in

the record on appeal in each of said three appeals have set forth and designated the same portion of the records, proceedings and evidence;

And it further appearing that the time for filing the record on appeal with the Appellate Court and docketing the appeal, in each of said appeals so filed on September 22, 1949, will not expire until November 1, 1949, while the time for so filing and docketing the appeal filed August 24, 1949 will, unless an extension be granted, expire on October 3, 1949:

Now Therefore, good cause appearing therefor, and on motion of Samuel C. Colby, Esquire, and Kyle Z. Grainger, Esquire, Attorneys for Appellants, (Kyle Z. Grainger, of Counsel),

It Is Ordered that the time within which the record on appeal may be filed and the appeal docketed with the Appellate Court in said appeal filed on August 24, 1949 is hereby extended to and including November 1, 1949.

Dated: This 29th day of Sept., 1949.

/s/ PAUL J. McCORMICK,

Judge of the United States  
District Court.

[Endorsed]: Filed Sept. 29, 1949. [128]

[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF THE RECORD PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON APPEAL IN EACH OF THREE APPEALS

To the Hon. Campbell E. Beaumont, Judge of the United States District Court:

To Wayne Long, as Trustee in Bankruptcy of the Estate of the Above Named Bankrupts, and to His Attorneys of Record, Harvey, Johnston, Baker and Palmer, and C. W. Johnston, Esquire, and to Edmund L. Smith, Clerk of the Said District Court:

The appellants in each of the following appeals, to wit:

(a) Appeal filed on August 24, 1949 from Order, Decree and Final Judgment filed, docketed and entered in the above-entitled matter on the 25th day of July, 1949;

(b) Appeal filed on September 22, 1949 from Order, Decree and Final Judgment filed, docketed and entered in the above-entitled matter on the 29th day of August, 1949, which said Order, Decree and Judgment was on said day filed and entered in Judgment Book 5, [129] at page 258 of the files and records of the above-entitled Court;

(c) Appeal filed on September 22, 1949 from Order, Decree and Final Judgment filed, docketed and entered in the above-entitled matter on the 29th

day of August, 1949, which said Order, Decree and Final Judgment was on said day filed and entered in Judgment Book 5 at page 271 of the files and records of the above-entitled Court; do designate the portions of the record proceedings and evidence to be contained in the record on appeal in each of said appeals as follows, to wit:

1. Involuntary Petition by Three Creditors;
2. Order of General Reference;
3. Order of Adjudication of Bankruptcy, and Order for filing schedules;
4. Certified Copy of Order Approving Trustee's Bond;
5. Petition for Order Amending, Modifying and Changing Order of Adjudication, and Petition for Order to Show Cause directed against partners;
6. Order to Show Cause (dated and filed November 15, 1946);
7. Answer to Order to Show Cause;
8. Stipulation that William A. McGugin Act as Special Master and as Referee in Place of Waldo R. Bergman;
9. Referee's Memorandum of Opinion;
10. Findings of Fact and Conclusions of Law (dated May 22, 1948, signed by William A. McGugin, Referee in Bankruptcy);
11. Order (Modifying Order of Adjudication



signed May 22, 1948, by William A. McGugin, Referee in Bankruptcy);

12. Petition for Review (From Order of Referee Modifying Order of Adjudication);

13. Certificate by Referee to Judge (on Order Modifying Adjudication to include Kaufman-Brown Potato Company as one of the General Partners of Gerry Horton Farms); [130]

14. Order (dated and filed August 29, 1949, confirming order of Referee determining that Kaufman-Brown Potato Company was a general partner, including Exhibits A and B);

15. Certified copy of Proof of Unsecured Debt and Letter of Attorney (Claim of Kaufman-Brown Potato Company);

16. Objection to Claim of Kaufman-Brown Potato Company, a co-partnership, composed of Charles H. Kaufman and Albert H. Brown;

17. Order to Show Cause (dated October 24, 1946, signed by Waldo R. Bergman, Referee in Bankruptcy);

18. Findings of Fact, Conclusions of Law (as to Kaufman-Brown Potato Company claim, dated May 22, 1948, signed by William A. McGugin, Referee in Bankruptcy);

19. Order (dated May 22, 1948, signed by William A. McGugin, Referee in Bankruptcy, disallowing claim of Kaufman-Brown Potato Company in part);

20. Petition for Review (from order of Referee in Bankruptcy Disallowing Claim of Kaufman-Brown Potato Co. in part);

21. Certificate by Referee to Judge on Order Disallowing claim of Kaufman-Brown Potato Company in part;

22. Order (Dated and filed August 29, 1949, confirming findings of fact and conclusions of law and order of the Referee determining that Kaufman-Brown Potato Company claim be denied until all creditors had been paid, including Exhibit A and B);

23. Reporter's Transcript of Proceedings had and testimony taken on Friday, March 21, 1947;

24. Reporter's Transcript of Testimony of Gerry Horton on December 8, 1947;

25. Crop Mortgage (Respondent's Exhibit "A");

26. Reporter's Transcript of Proceedings had and Testimony given on May 12-13, 1947;

27. Agreement dated January 22, 1944 (Respondent's Exhibit "D"); [131]

28. Agreement dated November 16, 1943 (Respondent's Exhibit "E");

29. Certified Copy of Minute Order entered in the Docket in the above-entitled matter on the 25th day of July, 1949, reading as follows:

"The Court having heretofore taken under submission the petition of Kaufman-Brown Potato Company for review of the Referee's Order, now

finds that there is sufficient evidence to support the Referee's findings; and by filing of the petition in involuntary bankruptcy, Kaufman-Brown Potato Company consented to adjudication. The Court adopts and confirms the Referee's findings as amended, and his order as amended is affirmed."

30. Notice of Appeal (Filed August 24, 1949);

31. Notice of Appeal (Filed September 22, 1949);

32. Notice of Appeal (Filed September 22, 1949);

33. Statement of points upon which Appellant Will Rely Upon Appeal (Appeal described in subdivision (a) above, filed on August 24, 1949);

34. Statement of points upon which Appellant Will Rely Upon Appeal. (Appeal described in subdivision (b) above, filed on September 22, 1949);

35. Statement of points upon which Appellant Will Rely upon Appeal (Appeal described in subdivision (c) above, filed on September 22, 1949).

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Kaufman-Brown Potato Company, a partnership composed of Charles H. Kaufman and Albert H. Brown, and the said Charles H. Kaufman and Albert H. Brown, Appellants in each of said appeals.

Affidavit of service by mail.

[Endorsed]: Filed Sept. 29, 1949. [132]

[Title of District Court and Cause.]

AMENDED STATEMENT OF POINTS UPON  
WHICH APPELLANT WILL RELY UPON  
APPEAL FROM JUDGMENT ENTERED  
IN JUDGMENT BOOK 5, PAGE 271 (AP-  
PEAL RE DISALLOWANCE OF CLAIM)

Pursuant to Rule 75-D of Rules of Civil Procedure, the appellants make the following concise statement of points upon which they intend to rely upon this appeal.

I.

The Order, Judgment and Decree of the Court was erroneous in that it decreed that Kaufman-Brown Potato Company was a general Partner of Gerry Horton Farms, a partnership engaged in the raising of potatoes, though the evidence was insufficient to prove it was ever such a partner, and, on the contrary, established that it was not a partner.

II.

The Order, Judgment and Decree of the Court was erroneous in disallowing the major portion of such claim against Gerry Horton Company, a co-partnership, and in disallowing the said claim against Gerry Horton Farms, a partnership composed of Gerry Horton and J. D. [134] Althouse, and was erroneous in making any order respecting an allowance with respect to Gerry Horton Farms, a partnership decreed to be composed of Kaufman-Brown Potato Company and Gerry Horton Farms,

since Kaufman-Brown Potato Company was not a partner with Gerry Horton Farms in any partnership and such non-existent partnership was improperly adjudged to be a bankrupt.

III.

The findings of fact and conclusions of law upon which said Order, Judgment and Decree was based are not supported by and not justified by the evidence.

IV.

The Order, Judgment and Decree of the Court was erroneous in that it adopted the Order of the Referee as amended, the findings of fact and conclusions of law of the Referee as amended, and confirmed the same, though the errors herein complained of in respect to the Order of the Judge of the District Court exist and apply with equal force to the said Order, findings of fact and conclusions of law of the Referee as amended by the Court.

Respectfully submitted,

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellants.

Affidavits of service by mail attached.

[Endorsed]: Filed Oct. 26, 1949. [135]

[Title of District Court and Cause.]

AMENDED STATEMENT OF POINTS UPON  
WHICH APPELLANTS WILL RELY  
UPON APPEAL FILED AUGUST 24, 1949

Pursuant to Rule 75-D of Rules of Civil Procedure, the appellants make the following concise statement of points upon which they intend to rely upon this appeal.

I.

The Order, Judgment and Decree of the Court was erroneous in that it decreed that Kaufman-Brown Potato Company was a general partner of Gerry Horton Farms, a partnership engaged in the raising of potatoes, though the evidence was insufficient to prove it was ever such a partner and, on the contrary, established that it was not a partner.

II.

The Order, Judgment and Decree of the Court in adjudicating Gerry Horton Farms, a partnership engaged in the raising of potatoes, composed of Kaufman-Brown Potato Company, a co-partnership consisting of Charles H. Kaufman and Albert H. Brown, and Gerry [137] Horton Farms, a co-partnership composed of Gerry Horton and J. D. Althouse, bankrupt, was erroneous in that said Kaufman-Brown Potato Company was not a co-partner and there was no such partnership, and also in that neither the proceedings had nor the evidence adduced permitted or justified such Order.



## III.

The Order, Judgment and Decree of the Court was erroneous in that it decreed that Kaufman-Brown Potato Company, and the co-partners composing it, namely Charles H. Kaufman and Albert H. Brown, are liable for the payment of the debts and obligations of Gerry Horton Farms, a co-partnership, and the costs and expenses in the bankruptcy proceedings, since it should have decreed that said Kaufman-Brown Potato Company and its co-partners were not liable for the debts and expenses involved in such bankruptcy proceedings.

## IV.

The Order, Judgment and Decree of the Court was erroneous in that Kaufman-Brown Potato Company, and the said co-partners composing it, did not consent to the adjudication in bankruptcy in this proceeding of any parties except Gerry Horton and J. D. Althouse, doing business as Gerry Horton Company, a co-partnership; Gerry Horton and J. D. Althouse, doing business as Gerry Horton Farms, a co-partnership; Gerry Horton, an individual, and J. D. Althouse, an individual, and did not consent or request that the Court administer any estates or the property of any estates other than the estates and the property of the above-named parties.

## V.

The findings of fact and conclusions of law upon which said Order, Judgment and Decree is based are not supported and not justified by the evidence in the case.

## VI.

The Order, Judgment and Decree of the Court and the findings of fact and conclusions of law upon which said Order, Judgment [138] and Decree is composed are erroneous, in that Kaufman-Brown Potato Company was not a co-partner with Gerry Horton Farms in any partnership; in that no such co-partnership was ever intended to be formed, or was formed between Gerry Horton Farms and Kaufman-Brown Potato Company; in that neither Kaufman-Brown Potato Company nor Charles H. Kaufman nor Albert H. Brown, its co-partners, consented to an adjudication in bankruptcy of any parties other than those adjudicated bankrupt in the original Order of adjudication, nor to an administration of the estates or property other than the estates and property of such parties; in that Kaufman-Brown Potato Company did no acts and participated in no acts set forth in said findings as done by Kaufman-Brown Potato Company in connection with Gerry Horton Farms, save and except things done by it pursuant to its agreement with Gerry Horton Farms, which things so done by it were not done as a partner of Gerry Horton Farms; in that no false representations were made to the Court respecting the status of Kaufman-Brown Potato Company, and in that Kaufman-Brown Potato Company was a creditor of Gerry Horton Farms, a partnership composed only of Gerry Horton and J. D. Althouse.

## VII.

The Order, Judgment and Decree of the Court was erroneous in disallowing the major portion of such claim against Gerry Horton Company, a co-partnership, and in disallowing the said claim against Gerry Horton Farms, a partnership composed of Gerry Horton and J. D. Althouse, and was erroneous in making any order respecting an allowance with respect to Gerry Horton Farms, a partnership decreed to be composed of Kaufman-Brown Potato Company and Gerry Horton Farms, since Kaufman-Brown Potato Company was not a partner with Gerry Horton Farms in any partnership and such non-existent partnership was improperly adjudged to be a bankrupt.

## VIII.

The Order, Judgment and Decree of the Court was erroneous [139] in that it adopted the Order of the referee as amended, the findings of fact and conclusions of law of the referee as amended, and approved and confirmed the same, though the errors herein complained of in respect to the Order of the Judge of the District Court exist and apply with equal force to the said Order, findings of fact and conclusions of law of the referee as amended by the Court.

Respectfully submitted,

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed Oct. 26, 1949. [140]

[Title of District Court and Cause.]

AMENDED STATEMENT OF POINTS UPON  
WHICH APPELLANT WILL RELY UPON  
APPEAL FROM JUDGMENT ENTERED  
IN JUDGMENT BOOK 5, PAGE 258 (AP-  
PEAL FROM ORDER RE ADJUDICATION  
IN BANKRUPTCY)

Pursuant to Rule 75-d of Rules of Civil Procedure, the appellants make the following concise statement of points upon which they intend to rely upon this appeal.

I.

The Order, Judgment and Decree of the Court was erroneous in that it decreed that Kaufman-Brown Potato Company was a general partner of Gerry Horton Farms, a partnership engaged in the raising of potatoes, though the evidence was insufficient to prove it was ever such a partner and, on the contrary, established that it was not a partner.

II.

The Order, Judgment and Decree of the Court in adjudicating Gerry Horton Farms, a partnership engaged in the raising of potatoes, composed of Kaufman-Brown Potato Company, a co-partnership consisting of Charles H. Kaufman and Albert H. Brown, and Gerry Horton Farms, [142] a co-partnership composed of Gerry Horton and J. D. Althouse, bankrupt, was erroneous in that said Kaufman-Brown Potato Company was not a co-partner and there was no such partnership, and also

in that neither the proceedings had nor the evidence adduced permitted or justified such Order.

### III.

The Order, Judgment and Decree of the Court was erroneous in that it decreed that Kaufman-Brown Potato Company, and the co-partners composing it, namely, Charles H. Kaufman and Albert H. Brown, are liable for the payment of the debts and obligations of Gerry Horton Farms, a co-partnership, and the costs and expenses in the bankruptcy proceedings, since it should have decreed that said Kaufman-Brown Potato Company and its co-partners were not liable for the debts and expenses involved in such bankruptcy proceedings.

### IV.

The Order, Judgment and Decree of the Court was erroneous in that Kaufman-Brown Potato Company, and the said co-partners composing it, did not consent to the adjudication in bankruptcy in this proceeding of any parties except Gerry Horton and J. D. Althouse, doing business as Gerry Horton Company, a co-partnership; Gerry Horton and J. D. Althouse doing business as Gerry Horton Farms, a co-partnership; Gerry Horton, an individual, and J. D. Althouse, an individual, and did not consent or request that the Court administer any estates or the property of any estates other than the estates and the property of the above-named parties.

## V.

The findings of fact and conclusions of law upon which said Order, Judgment and Decree is based are not supported and not justified by the evidence in the case.

## VI.

The Order, Judgment and Decree of the Court and the findings [143] of fact and conclusions of law upon which said Order, Judgment and Decree is composed are erroneous, in that Kaufman-Brown Potato Company was not a co-partner with Gerry Horton Farms in any partnership; in that no such co-partnership was ever intended to be formed, or was formed between Gerry Horton Farms and Kaufman-Brown Potato Company; in that neither Kaufman - Brown Potato Company nor Charles H. Kaufman nor Albert E. Brown, its co-partners, consented to an adjudication in bankruptcy of any parties other than those adjudicated bankrupt in the original Order of adjudication, nor to an administration of the estates or property other than the estates and property of such parties; in that Kaufman-Brown Potato Company did no acts and participated in no acts set forth in said findings as done by Kaufman-Brown Potato Company in connection with Gerry Horton Farms, save and except things done by it pursuant to its agreement with Gerry Horton Farms, which things so done by it were not done as a partner of Gerry Horton Farms; in that no false representations were made to the Court respecting the status of Kaufman-Brown



Potato Company, and in that Kaufman-Brown Potato Company was a creditor of Gerry Horton Farms, a partnership composed only of Gerry Horton and J. D. Althouse.

VII.

The Order, Judgment and Decree of the Court was erroneous in that it adopted the Order of the referee as amended, the findings of fact and conclusions of law of the referee as amended, and approved and confirmed the same, though the errors herein complained of in respect to the Order of the Judge of the District Court exist and apply with equal force to the said Order, findings of fact and conclusions of law of the referee as amended by the Court.

Respectfully submitted,

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed Oct. 26, 1949. [144]

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[Title of District Court and Cause.]

Bakersfield, California, May 12-13, 1947

REPORTER'S TRANSCRIPT OF PROCEEDINGS HAD AND TESTIMONY GIVEN

Hearing on Order to Show Cause directing Kaufman-Brown Potato Company, a copartnership, composed of Charles H. Kaufman and Albert

H. Brown, to appear before Waldo R. Bergman as Referee in Bankruptcy and Special Master; and continued hearing on objection filed by the Trustee to the claim of said Kaufman-Brown Potato Company.

Counsel Appearing:

For the Trustee:

Harvey, Johnston, Baker & Palmer  
C. W. Johnston, Esq.

For the Respondents:

Kendall & Howell  
Donald G. Kendall, Esq.

The Court: This is the time stipulated for hearing the order to show cause directing Kaufman-Brown Potato Company, copartners, composed of Charles H. Kaufman and Albert H. Brown, to appear before Waldo R. Bergman as Referee and Special Master, by virtue of an order signed by Judge Leon R. Yankowitz, dated November 15, 1946, which order was pursuant to a petition for an order to amend, modify and change the order of adjudication to include Charles H. Kaufman and Albert H. Brown, in which petition it is alleged they are partners. Now, is there anything else?

Mr. Johnston: Also, there was continued until this time the objection which was filed by the Trustee to the claim of Kaufman & Brown, a copartnership, filed against both the Farms and the Company.

The Court: That's right. It is also to hear the

matter of the objection to their claim, filed by the Trustee.

Mr. Johnston: It was heretofore agreed on that, and there is a stipulation on file, I think, whereby the continuance was agreed upon if we could take the deposition of or obtain the testimony of the bankrupt, Gerry Horton, at a later date, because of the fact that these matters were continued at various times to accommodate Mr. Kaufman and Mr. Brown.

The Court: There is a stipulation on file and also an order. [2\*]

Mr. Johnston: Also on the order to show cause on the objection to the claim, proof would have to be introduced by Kaufman-Brown and the burden would be on them. On the matter that was referred to you as Special Master, of course in that particular case we should introduce our evidence first, but as I say, due to the fact this continuance had to be had, I won't be able to introduce all, and I will have to get my deposition afterwards.

Mr. Kendall: We will stipulate to that procedure.

Mr. Johnston: At this time I will introduce some of these exhibits for the purpose of the record. I suppose, Mr. Kendall, we can refer to these and they may be considered part of the record, as read in the record, without the necessity of reading them in. Do you want them marked, each one of them, as exhibits?

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\* Page numbering appearing at bottom of page of original Reporter's Transcript.

The Court: Yes.

Mr. Kendall: Is the original agreement in the record?

Mr. Johnston: No; it hasn't been introduced. The pleadings admitted the two agreements?

Mr. Kendall: Yes.

The Court: I want the record to also show this was continued from this morning at 10 a.m., until 1:30 by stipulation.

Mr. Johnston: At this time I want to introduce in evidence Order Approving of Claims. It is dated January 10, [3] 1947, and marked filed by the Referee as 1/22/47, and, for the purpose of the record, that is introduced only for the purpose of approving the claim of R. E. Cady.

Mr. Kendall: R. E. Cady; and the amount?

Mr. Johnston: \$71.17.

Mr. Kendall: I understand you are introducing this as being a claim against the joint venture transaction of the potato farming venture?

Mr. Johnston: Yes.

Mr. Kendall: Does it state the nature of the obligation?

The Court: It is Order Approving Claim.

Mr. Johnston: It is Order Approving Claim. There is a whole bunch in there but I was introducing it for the purpose of approving the claim of R. E. Cady.

Mr. Kendall: This is subject to objection if it is intended to be introduced as a claim they would be responsible for. It doesn't prove this claim arose

out of this transaction. In admitting them in evidence we are not admitting then with any admission that it is arising out of this transaction. It is just an allowed claim in this bankruptcy.

Mr. Johnston: Yes.

The Court: Aren't those claims segregated?

Mr. Johnston: Yes; this is allowed against the farms company. They would be bound but it is also allowed against the farms company; they would be liable as against the farms [4] company.

Mr. Kendall: On this potato deal it would have to be proved by evidence.

The Court: It is against the farms company but hasn't been designated as having been particularly allowed against this transaction.

Mr. Johnston: At this time I want to introduce exhibit marked 2, Order Approving Account of Trustee, dated January 20, 1947, and filed on the same day.

Mr. Kendall: May I see that, please? What is that—First Account of Trustee?

Mr. Johnston: No; this is the order approving account.

Mr. Kendall: What account; the first?

Mr. Johnston: Yes. That is Exhibit 3. This is Order Approving Claims, and that is dated January 4, 1947, and that is introduced as to these two claims: Larkin & Morse, \$914.10; Gundlach Plumbing Company, \$80.06. Next, which I want marked No. 4—that is First Report and Account of Trustee and Petition for First Dividend.

Mr. Kendall: May I see that?

Mr. Johnston: Just a minute. It is marked "Filed November 29, 1946. (Handing document to counsel.) The next is "Order Approving Claims." That is dated November 19, 1946 and filed the same day. That is No. 5. It shows that the following were approved against Gerry Horton Farms, as [5] follows: Pacific Gas & Electric Company, \$2,946.52; King Lumber Company, \$364.16; Barnett Tire Company, \$224.32; Ace Tractor Company, \$212.87; Wasco Tractor Company, 81.02; Bakersfield Hardware, \$50.32; F. E. Peterson, \$122.23; Stroud-Seabrook, \$106.58. The next one here is—I want to call this No. 6.

Mr. Kendall: What is the amount of that claim?

Mr. Johnston: It is the claim of Wayne Long, as Trustee of Gerry Horton Company, against Gerry Horton Farms, \$38,770.24.

The Court: You want these offered in evidence as exhibits in this matter before the court?

Mr. Johnston: Yes. The next one I will mark and introduce is No. 7, and it is the creditor's claim filed by R. E. Cady.

Mr. Kendall: Another one?

Mr. Johnston: I have two for him.

Mr. Kendall: You are starting back at 1, then; when not make this 1-a?

Mr. Johnston: Let's call it a number in order, then—7.

The Court: That is for \$71.17?

Mr. Johnston: No; the claim is for considerable more than that, but you see, we had an order to



show cause and notice was given as to all claims to determine what were claims against the copartnership of the company and what were [6] claims against the copartnership of the Farms, and the Court determined that of the amount, the total amount of claim \$71.17 was against the Farms and the other was against the Company.

The Court: That's right.

Mr. Johnston: The next is the claim of Larkin & Morris.

The Court: That will be Exhibit No. 8.

Mr. Johnston: Yes; I want to introduce that in evidence. The next number is Bakersfield Hardware Company; that is a claim of \$50.32, No. 9.

The Court: Yes.

Mr. Johnston: Then here is the itemized statement. Can we mark that 9-a?

The Court: Yes.

Mr. Johnston: The next is 10 and 10-a; the claim of Wasco Hardware Company and the itemized statement of Wasco Hardware Company, respectively, the claim being for \$81.02.

Mr. Kendall: I notice on this \$81 claim an item of July 10, for forks of some kind. The potatoes were all up and going by then.

Mr. Johnston: I don't know whether they were or not. Some say they were and some say they weren't.

Mr. Kendall: As I understand it, there are being introduced anyway now; not for the purpose of proving them against Kaufman & Brown, but merely preliminarily, because there is no evidence against

Kaufman [7] & Brown at the present time. There is no showing that they were connected in any particular deal with Kaufman & Brown.

Mr. Johnston: They have been approved by the Court as a claim against the Farms Company in this amount.

Mr. Kendall: Then your purpose in introducing them is preliminary and you hope to tie them up, that they were in these deals in which Kaufman & Brown were involved?

Mr. Johnston: That's right. They were on the potato deal in the two pieces of land on which we claim Kaufman & Brown were in the partnership.

The next will be No. 11, which is the claim of Kern County Bank. There are two claims of the Kern County Bank, but this one is based upon a note in the original amount of \$12500, which is secured by a chattel mortgage. The next is Ace Tractor Company claim.

Mr. Kendall: Now, your Kern County Bank note: is there a balance on that note?

Mr. Johnston: It is introduced in there. You will have to get it out of there. It was allowed in the account. It is in the order and I will go back and pick it up and show you where it is. The next is No. 12, Ace Tractor Company. That is \$212.87, and the itemized statement marked 12-a.

The next is Barnett Tire Company. That is \$224.32. That would be No. 13. I haven't got the slips on some of these. [8]

The next is the Pacific Gas & Electric Company claim.

The Court: No. 14.

Mr. Johnston: And can we mark, 14-a, the itemized statement?

The Court: Yes.

Mr. Johnston: The next one is 15; Central Canal Company; that is \$583.40.

The Court: That will be No. 15.

Mr. Johnston: The next is King Lumber Company.

The Court: No. 16.

Mr. Johnston: And the itemized statement, there, marked No. 16-a.

The Court: Yes.

Mr. Johnston: And could we go back and mark the Barnett Tire Company—their itemized statement—13-a? Also, an order approving this Central Canal Company claim.

Mr. Kendall: I didn't hear all that.

Mr. Johnston: There was an order approving those claims. It has been introduced in evidence but I didn't read it off. All these claims were approved. The next is the Gundlach Plumbing Company for \$80.06. That is the claim that was filed. What is the number—17.

The Court: What about the itemized statement?

Mr. Johnston: It is on there. It is part of the claim.

The Court: It is part of the claim? [9]

Mr. Johnston: Yes. Some of these itemized

statements got loose.

Mr. Kendall: This is plumbing out at Horton's house. I do not understand how that figure has any business in there, by any stretch of the imagination, as a claim against Kaufman-Brown.

Mr. Johnston: You are making a statement that might not be correct.

Mr. Kendall: If you can prove it wasn't—but it says it was to his house.

Mr. Johnston: Next, I want to introduce claim filed by Stroud-Seabrook, \$106.58, marked 18, and the itemized statement marked 18-a. This one will be marked 19, the claim of F. E. Peterson for \$122.23, and the itemized statement.

The Court: 19-a.

Mr. Johnston: 19-a; yes. Now, I have been trying to find—I want the proof of mailing to creditors of the notice.

The Court: Can we go ahead with the rest of it?

Mr. Johnston: We will mark it "Exhibit No. 20," Notice to Creditors, and proof of mailing, of meeting of January 4, 1947.

Here is claim of Kern County Bank; it is Exhibit 11 that was introduced in evidence and it is Exhibit G that is attached to the account, and that shows that there is due the Kern County Bank \$2,154.35 by the Farms. [10]

The Court: Do you wish to introduce that in evidence at the present time?

Mr. Johnston: It has already been introduced.

Then, the claim of Central Canal Company is approved and is on the same page. That shows \$583.40.

The Court: What exhibit did we mark that?

Mr. Johnston: That was marked as Exhibit 11, but Exhibit 11 introduced in these proceedings is the First Account, and to the First Account is attached a list of all said creditors' claims; then the Court, by its order of January 20, 1947, which was introduced as Exhibit 2, approved those creditors' claims set forth in Exhibit G as far as the Farms are concerned. Do I make that clear now?

Mr. Kendall: Yes.

Mr. Johnston: I think that is all of these claims. That is all I have got. I am just introducing them so Mr. Kendall will know what creditors' claims are in there. Then, do you want to continue this until tomorrow?

Mr. Kendall: Yes.

The Court: Ten o'clock. This matter will be continued until tomorrow at 10 o'clock. [11]

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Bakersfield, California, 10 A.M., May 13, 1947

Hearing before Waldo R. Bergman, as Referee in Bankruptcy and Special Master, continued from May 12, 1947, on Order to Show Cause directed to Kaufman-Brown Potato Company, dated November 15, 1946, signed by Judge Leon R. Yankowitz; the same parties being present.

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The Court: This is the time set for the hearing.

Mr. Kendall: For the purpose of the record, Mr. Referee, Mr. Samuel C. Colby is here as my associate for the respondent Kaufman-Brown Company in this matter. Do you wish us to proceed?

Mr. Johnston: Yes. That was the agreement yesterday.

### CHARLES H. KAUFMAN

having been first duly sworn to tell the truth, gave the following testimony:

#### Direct Examination

By Mr. Kendall:

Q. What is your full name?

A. Charles H. Kaufman.

Q. Where do you reside?

A. Chicago, Illinois.

Q. Are you a member of the Kaufman-Brown Company?      A. That's right. [12]

Q. And what is that company—a partnership?

A. A partnership.

Q. Who are the partners?

A. Charles H. Kaufman and Albert H. Brown.

Q. Was that partnership in existence in the years 1943 and 1944?      A. It was.

Q. At that time were the members of the partnership the same as you have just testified to?

A. They were.

Q. Are you personally acquainted with the bankrupt, Gerry Horton?      A. I am.

Q. When did you first meet him?



(Testimony of Charles H. Kaufman.)

A. Oh, I have known Mr. Horton for approximately ten years.

Q. Prior to the year 1943, had you had any business dealings with him?

A. No, I did not.

Q. When did you have the first business dealings with Gerry Horton or the Gerry Horton Farms Company or Gerry Horton Company?

A. In 1943.

Q. In 1943?                      A. That's right.

Q. And what was the nature of that transaction?

A. Mr. Horton came to our offices in Chicago and asked us to finance a growing deal.

Q. Approximately what time of the year was this?                      A. In November. [13]

Q. Of what year?                      A. 1943.

Q. Just proceed.

A. And asked us to finance a growing deal on some land that he held the lease on at Shafter.

Q. Did Mr. Horton present any papers to you on that matter, or what transpired?

A. No, he didn't present any papers at that time; however, we did agree to——

Mr. Johnston: Just a minute. What was the conversation?

Mr. Kendall: Yes; that would be a conclusion. Just state what the conversation was; what he said and what you said, as well as you can remember?

(Testimony of Charles H. Kaufman.)

A. Mr. Horton asked us to finance a growing deal and we were to advance——

Mr. Johnston: Just a moment; not what they were going to; it is a question of this: what did you state you would do, in the conversation?

A. We stated that we would finance his growing deal at Shafter.

Mr. Kendall: That conversation was limited solely to a deal at Shafter?

A. That's right.

Q. Were any papers prepared on that deal?

A. They were at a later date.

Q. Was there any further conversation as to the details [14] of the financing, as to how it was to be handled, and so forth?

A. We were to put in the necessary amount of money to bring the crop up to harvest, and in return we were to receive a percentage of the deal, with the privilege of buying the potatoes at market price. In return, we were to be given a crop mortgage, as security.

Q. Did you receive any documents, then, from Mr. Horton?

A. We received this crop mortgage and a contract, I believe.

Mr. Kendall: And for the purpose of the record and to eliminate the introduction of additional exhibits, can we stipulate that the contract referred to is the contract which is set up in the pleadings

(Testimony of Charles H. Kaufman.)

as an exhibit and marked, which bears date the 16th day of November, 1943.

Mr. Johnston: That is the contract he is referring to?

Mr. Kendall: That is the one he is referring to now; that is the Shafter contract.

Mr. Johnston: Yes.

The Court: What is the exhibit number on that?

Mr. Kendall: It is Exhibit E in the petition. Then we would like to introduce as our exhibit the crop mortgage dated the 16th day of November, 1943, that went with that contract—that isn't an exhibit—which crop mortgage shows to be recorded in the office of the County Recorder of Kern County. [15]

Mr. Colby: Does that have an exhibit number?

Mr. Kendall: That is respondent's exhibit.

The Court: We have numbers here and we have letter exhibits. What shall we call this one?

Mr. Kendall: Let us have it marked Respondent's Exhibit A.

Q. (By Mr. Kendall): Who prepared the crop mortgage and agreement?

A. It was prepared by Mr. Horton's attorney.

Q. Was it mailed to you in Chicago, from California?

A. That's right; it was.

Q. You executed it in Chicago?

A. That's right.

Q. And returned the copy to Mr. Horton?

A. That is correct.

(Testimony of Charles H. Kaufman.)

Q. And sent the crop mortgage out for recording?      A. That's right.

Q. Now, subsequent to the execution of these documents on November 16, 1943, did you make advances to Mr. Horton?      A. I did.

Q. Now, after you had entered into this contract of November 16, 1943, did you enter into a subsequent contract with Mr. Horton?      A. I did.

Q. And when I say "Mr. Horton," I refer to Gerry Horton and J. D. Althouse, doing business under the firm name and style of Gerry Horton Farms, which is the correct party to the [16] contract; and did you enter into a second contract with that party?      A. I did.

Q. And was that on the 22nd day of January, 1944?      A. It was.

Q. And that is the contract that is attached to the petition and marked "Exhibit D" in the petition?      A. That's right.

Q. At the time of entering into that contract did you have any conversation with Mr. Horton?

A. Mr. Horton came to our office in Chicago and said that he and Mr. Althouse had secured a lease on three hundred and some odd acres of land at Arvin and asked us to finance the growing of this particular——

Mr. Johnston: I am going to object to this. The best evidence is the contract which is introduced in evidence. Any negotiation leading up to the con-

(Testimony of Charles H. Kaufman.)

tract would be all bound to the contract; anything said before that wouldn't be binding.

Mr. Kendall: This is preliminary. Anything with reference to the contract I think should be explained.

Mr. Colby: For the further reference, if I may be permitted to say; there is some question about the construction of this contract, that it may be ambiguous. If it is ambiguous then all testimony is permissible to establish the intent of the parties at the time.

The Court: Let it go ahead. [17]

A. (Continuing): Mr. Horton came into our office in Chicago and stated that the Gerry Horton Farms had a lease on 320 acres of land at Arvin and asked us to finance the growing of a potato crop on this particular land.

Q. (By Mr. Kendall): What terms were discussed for the financing?

A. We were to put up whatever moneys were necessary to bring this crop up to the time of harvest, and in return were to receive a percentage and also the privilege of buying these potatoes at prevailing market prices.

Q. The terms of that transaction were made the same as the prior transaction—the Shafter deal?

A. I believe there was a slight difference in the percentage.

The Court: In any event, whatever your con-

(Testimony of Charles H. Kaufman.)

versation was, it terminated in the execution of a written contract, which you have here?

The Witness: That's right.

Q. (By Mr. Kendall): And was that contract executed in the same manner as the other, by Mr. Horton mailing it to your office and you mailing it back? A. It was.

Q. At that time was it accompanied by a chattel mortgage, also? A. A crop mortgage. [18]

Q. And that crop mortgage is recorded here in Kern County? A. That's right.

Mr. Kendall: If your Honor please, I thought we had a copy of that here, but we do not have. The original of the other crop mortgage somebody stated was introduced here before.

The Court: I do not recall it.

Mr. Kendall: If not, I would like to introduce a photostat copy from the Recorder's Office, and I will get that.

Mr. Johnston: Do you have the book and page on that?

Mr. Kendall: No, I don't have. It was securing a note for \$19,250. I can get it by noon.

Q. (By Mr. Kendall): Subsequent to the execution of the second agreement and crop mortgage, did you make advances to him? A. We did.

Q. I will show you here checks of Kaufman-Brown Potato Company totaling \$42,594.82.

The Court: Are you going to offer those, Mr. Kendall?



(Testimony of Charles H. Kaufman.)

Mr. Kendall: Yes. Do you want them separate?

The Court: Well, I don't know.

Mr. Johnston: Maybe I can save you time. What is the purpose of this?

Mr. Kendall: We are showing the advances made. I am putting it in the proper order. Let us have them marked for identification and we will introduce them when we can tie them up with the evidence showing that is where the money went. We [19] can't put it all in at one time. I will have them marked as Respondent's "B"—one exhibit.

Mr. Johnston: For identification only?

Mr. Kendall: Yes; for identification only.

Q. (By Mr. Kendall): I will show you this group of checks marked "Respondent's Exhibit B for Identification" and ask you if you recognize those?      A. I do.

Q. And those were drawn on Kaufman-Brown Company?      A. Yes.

Q. And you signed them?

A. I signed some of these and some of them were signed by Mr. Brown.

Q. And what was the purpose of the checks?

Mr. Johnston: The checks speak for themselves and are the best evidence.

Mr. Kendall: We have some made to Western Union and signed by Mr. Kaufman. He can testify what he was doing with his money.

Mr. Johnston: Yes.

Q. (By Mr. Kendall): Take the first one, for

(Testimony of Charles H. Kaufman.)

\$5,000, payable to Western Union Telegraph Company, dated November 9, 1943?

A. Mr. Horton asked us to wire this money to his bank, as he needed funds immediately.

Q. Did you personally take the money to Western Union? [20]

A. Yes; I personally took the money to Western Union.

Q. For the purpose of wiring the money the check had to be made to Western Union?

A. That is correct.

Q. And the wire went to Gerry Horton Company here, or Gerry Horton?

A. The wire went to——

Mr. Johnston: The wire would be the best evidence.

The Court: Do we have it?

Mr. Kendall: Is there any objection, Mr. Johnston, that this money was not advanced? Did anybody make a contention that it wasn't advanced?

Mr. Johnston: I don't know.

Mr. Kendall: We state it was, and if nothing to the contrary—he certainly isn't going to take money down to the Western Union and give it to them.

Q. (By Mr. Kendall): Where did you direct the wire?

A. This money was wired to Gerry Horton Farms' bank at Oildale.

Q. The Kern County Bank at Oildale?

(Testimony of Charles H. Kaufman.)

A. That's right, for deposit to his account.

Q. On the second check that is made out to Halstead Exchange National Bank, in amount \$12,800?

A. This check was in payment of a draft drawn by Gerry Horton of the Gerry Horton Farms. [21]

Mr. Johnston: I don't have any objection.

Q. (By Mr. Kendall): These checks, reading from Exhibit "B"—the ones we have definite proof, and are acceptable here: January 4, 1944, \$10,000, which is a check and draft; January 22, 1944, \$6,074.82, represented by check of Kaufman-Brown Potato Company, paying a draft; February 2, 1944, \$3720, represented by check of Kaufman-Brown Potato Company, paying draft. We put on the testimony on the \$5,000 check; that is the one you personally took to Western Union, directed to Kern County Bank?

A. That is right.

Q. We have check dated November 2, 1943, \$12,800, payable to Homestead Exchange National Bank, signed by A. H. Brown?

A. A. H. Brown?

Q. A. H. Brown is your partner?

A. That's right.

Q. Do you personally know anything about the disposal of that check?

A. That was in payment of a draft drawn by the Horton Farms.

Q. Now, we have the check, January 27, 1944, in the sum of \$5,000, to Western Union Telegraph Company, signed by A. H. Brown. Do you know

(Testimony of Charles H. Kaufman.)

anything about the disposal of the funds on that?

A. That was handled the same way as the other check made [22] out to Western Union; it was for funds wired to the bank for the credit of the account of Horton Farms. •

The Court: Were there two checks for \$5,000?

Mr. Kendall: There are two; one of them signed by C. H. Kaufman and dated November 9, 1943; the other dated January 27, 1944, signed by A. H. Brown, to Western Union.

Q. (By Mr. Kendall): Do you recall, Mr. Kaufman, when the crop was completed—the harvesting of the crop on the Arvin ranch?

A. The crop, the completion of it was somewhere in the first week of June.

Q. In other words, on or before the 8th of June it would have been completed? A. Yes.

Q. Some time during that week?

A. That's right.

Q. When did they complete the harvest on the Shafter ranch?

A. That was completed before the 4th of July.

Q. It was completed around the first few days of July? A. That's right.

Q. It was definitely completed before the 4th?

A. That's right.

Q. Throughout these two contracts regarding the Shafter potato deal and the Arvin potato deal, did you ever have any other business dealings with

(Testimony of Charles H. Kaufman.)

Gerry Horton individually, or Gerry Horton Farms, or J. D. Althouse, or Gerry Horton Company?

A. No; none. [23]

Q. These were the sole transactions?

A. That's right.

Q. Do you have any interest of any kind in the Gerry Horton Farms or Gerry Horton Company?

Mr. Johnston: Just a moment. That is incompetent, irrelevant and immaterial. The question as to what interest he might have under this contract would be for the court to decide.

Mr. Kendall: I mean outside of this.

The Court: Outside this contract?

Mr. Kendall: Yes. You see, in your citation you try to make him a general partner in this business, participating all the way through, not limiting it to these alleged contracts.

Mr. Johnston: That's right. All right; I have no objection.

Q. (By Mr. Kendall): Other than these contracts with Gerry Horton, did you ever have any other agreement of any kind regarding sharing crops or profits from crops, with Gerry Horton Company? A. None.

Q. Your sole transactions with Gerry Horton Company were limited to these contracts and crop mortgages securing them; is that correct?

A. That is correct.

Q. Did you ever talk to any creditors of Gerry Horton Company regarding arranging credit? [24]

(Testimony of Charles H. Kaufman.)

A. No, I did not.

Q. Did you ever talk to anyone in the Kern County Bank regarding credit for Gerry Horton or Gerry Horton Company? A. No.

Q. Did you ever talk to anyone at Pacific Gas & Electric Company regarding furnishing power for Gerry Horton? A. No.

Q. Now, the total amount of the advances, as shown by the checks we have testified to, has been totalized thereon to the sum of \$42,594.82. Does that represent all moneys that Kaufman-Brown Potato Company advanced to the Horton Company?

A. That's right.

Q. In addition to that sum wasn't there in fact an overdraft that was covered, in the sum of \$884.97?

A. Do you want the explanation of that \$884.97?

Mr. Kendall: Yes.

Mr. Johnston: That is a claim against Gerry Horton Company?

Mr. Kendall: Yes.

Mr. Johnston: They would be entitled to that because there is no claim they were interested in the company. On that particular one there is no objection. The other claims are on the farms. As far as any claim against the company—that partnership—I have to concede they would be entitled to that. No objection to that. [25]

Mr. Kendall: That overdraft of \$884.97?

Mr. Johnston: Whatever the check is.



(Testimony of Charles H. Kaufman.)

Mr. Kendall: But in your objection you include the total amount—the gross amount?

Mr. Johnston: In the objection; because he filed claim against both outfits. You are only entitled to as against one or the other. I have no objection to that claim against the Company.

Mr. Kendall: As against the Company we have but one claim; that is on this overdraft of Gerry Horton Company, \$884.97. The remainder of our claim arises from our financing of the Farms and is our claim against the Farms.

Mr. Johnston: No objection to that.

The Court: Did he file separate claims or single claims?

Mr. Kendall: Just a single claim.

The Court: Then the claim to be adjusted out would be less this overdraft—against the Company but not against the Farms.

Mr. Johnston: My objection to the claim is that it couldn't be allowed against both of them, if allowable at all, and if Mr. Kendall concedes that that amount on the overdraft for a check that is drawn on the Company is a claim only against the Company, they would be entitled to it as a claim against the Company.

Mr. Kendall: That is correct; we concede that. Then [26] the objections that are now going on are regarding a claim against the Farms which is in the amount of \$22,594.82 and is represented by checks all of which are dated July 12, 1944 and are in the following amounts—

Mr. Johnston: Now, Mr. Kendall, do you claim

(Testimony of Charles H. Kaufman.)

any amounts against the Farms excepting those checks?

Mr. Kendall: That is all.

Mr. Johnston: Then you don't have to prove the amounts because the checks speak for themselves. The objection is on the ground that when they are partners they wouldn't be entitled to prorate against other creditors. He doesn't have to prove his claim as to the amount. Those checks speak for themselves and were drawn on the Farms and sent to him and returned marked "Insufficient Funds."

Mr. Kendall: In other words, the amount of our claim is established and there is no objection. The only objection now is to proving the effect of our contractual relations with them.

Mr. Johnston: With them on this potato deal. Those checks, as I understand it, are the ones out on this potato deal.

Mr. Kendall: That's right. I will ask the question of Mr. Kaufman, to get it in the record:

Q. These checks returned "N.S.F." and attached as an exhibit to our claim are checks which were sent in payment [27] of the balance of your advances on the potatoes? A. That is correct.

Mr. Kendall: We have here, Mr. Referee and Mr. Johnston—I am offering here a series of checks running from No. 1592 to 1911, on the Kaufman-Brown Potato Company, made out to Gerry Horton Company, which I am asking to be marked at this time and identified as Respondent's Exhibit C—one exhibit.

(Testimony of Charles H. Kaufman.)

Mr. Johnston: My objection is, it is incompetent, irrelevant and immaterial, and not within the issues.

Mr. Kendall: These checks are offered for the purpose of showing payment to Gerry Horton Company of all moneys received from the sale of the potatoes under the two contracts between Gerry Horton Farms and Kaufman-Brown Potato Company. That is correct, isn't it, Mr. Kaufman?

A. That is right.

Q. These are checks paid to the Horton Company for the balance of the potatoes?

A. That's right.

Mr. Kendall: Whether they become material rests on as to whether you want to enforce that \$40,000 claim the Trustee alleges the Company has against the Farms; is that right?

The Court: I will take these for identification at this time and I will hold my ruling on the checks.

Q. (By Mr. Kendall): Who kept the books on the transactions, as far as the expenditures on the Farms were concerned? [28]

A. Gerry Horton.

Q. That is, there were no books kept at your end of the line on that transaction?

A. None at all.

Q. Did you consult with Gerry Horton regarding the financial outcome of the Arvin contract?

A. I did.

Q. And what was the conversation?

A. At the time, Mr. Horton stated that the rec-

(Testimony of Charles H. Kaufman.)

ords were not complete, but he was of the opinion that the Arvin deal would show a small loss.

Q. Did he give you any figures at that time?

A. At that time he said it may run into two or three thousand dollars.

Q. Did you have any conversation with Mr. Horton regarding the outcome of the Shafter deal?

A. I did.

Q. And what was that conversation?

A. Mr. Horton stated that in his opinion the Shafter deal would show a profit sufficient to overcome the deficit at Arvin.

Q. Mr. Horton had all the facts and figures before him at his office when he made those representations?

A. That's right; he did.

Q. And between the two deals, then, as far as he [29] represented to you, there was no loss?

A. That's right.

Q. And at that time he gave you the checks to repay the balance of your account?

A. That is correct.

Q. And those were the checks that were returned from the bank and upon which your claim is made?

A. That's right.

Mr. Kendall: That is all.

The Court: I wonder if you would recapitulate on these checks that represent your claim; why they were given and to adjust what figures?

Mr. Kendall: The checks attached to our claim

(Testimony of Charles H. Kaufman.)

are all dated July 12, 1944, and are given on the Gerry Horton Farms account with the exception of the one check which we have segregated heretofore. The total amount of those checks upon which we are basing our claim against the Farms is \$22,-594.82, made up of the following checks to Kaufman-Brown Potato Company: \$7,594.82——

The Court: I will take the total, but may I ask whether or not these checks represent the difference in the advances pursuant to the terms of the contract?

Mr. Kendall: These checks represent the difference between the total amount of the advance and what had already been repaid as against what our claim now is. The total of [30] these checks plus what we had received back make the total amount of our advances. If these checks had cleared we would have no claim.

The Court: I see.

Mr. Johnston: What was the total amount of money you received back on your total advances?

Mr. Kendall: We received back \$20,000.

Mr. Johnston: That is, \$20,000 even?

Mr. Kendall: Yes.

Mr. Johnston: And the difference between \$20,000 and the total amount of your advances is represented by these checks upon which your claim is based?

Mr. Kendall: That's right.

(Testimony of Charles H. Kaufman.)

Mr. Johnston: Does that clear it up, Mr. Referee?

The Court: Yes.

Mr. Kendall: That is all.

Cross-Examination

By Mr. Johnston:

Q. These advances you made were made on the chattel mortgages?

A. These advances were made, that's right, on the chattel mortgages.

Q. And where are the notes that were given in connection with the two chattel mortgages?

A. I don't have the notes. [31]

Q. Those were returned, weren't they?

A. Returned to who?

Q. To Mr. Horton? A. I don't recall.

Mr. Kendall: I will stipulate that the checks on which our claim was based were accepted in payment of the mortgage. We are not making claim on the notes. We don't have a double claim here.

Q. (By Mr. Johnston): Did you buy all of the Arvin potatoes; that is, the potatoes that were grown on the Arvin farm?

A. Did we buy all of them?

Q. Yes. A. No, we did not.

Q. You bought a substantial portion of them, didn't you?

A. I don't recall what portion we bought.

Q. These checks you have introduced in evi-



(Testimony of Charles H. Kaufman.)

dence—have they covered the purchase of the potatoes you made from the company?

A. That's right.

Q. And those potatoes were all grown on the Arvin farm and Shafter farm?

A. That's right.

Q. And the \$20,000 you received in cash—which note did they apply that on; the Arvin note or the Shafter note?

A. That was applied on the indebtedness; that is, on the two of them combined.

Q. The \$20,000?

A. That's right. In other words, we consider the [32] entire amount as one deal, so far as the firm's indebtedness to us.

Q. You don't have the notes—but do you have a record showing your book records—how you applied that money?

A. All these advances were charged against the——

Q. I say, do you have a book record with you?

A. No, I do not.

Q. You do not have it with you?                      A. No.

Q. Do you have a record with you of the potatoes you received from the Arvin property?

A. We don't have those checks segregated. They are all together.

Q. You didn't understand my question. Do you have a record of the potatoes you received—the total amount of the potatoes you received?

(Testimony of Charles H. Kaufman.)

A. No, we do not.

Q. You don't have a record of the payments that you made for the potatoes that were shipped from the Arvin property? A. No.

Q. In other words, those checks you have introduced include all the checks you sent them on both the Shafter and the Arvin property?

A. That's right.

Q. Can you segregate those to show what was purchased from the Arvin property and what was purchased from the [33] Shafter property?

A. We did. All of these records were kept, but all the time in his office; that is, invoices were issued to us on all these particular cars; car numbers, I believe, were on each check; however, where those cars were shipped from—we do not have that record.

Mr. Kendall: You could check those from Horton's record.

Q. (By Mr. Johnston): Did Mr. Horton ever furnish you a statement to show the losses or profits that were made on this Arvin transaction?

A. He never furnished us with the bank statements, although he had promised repeatedly to do it.

Q. Did he ever furnish you a statement as to losses or profits on the Shafter transaction?

A. No, he did not.

Q. Do you have a California representative?

A. At that particular time?

Q. At any time?

(Testimony of Charles H. Kaufman.)

A. We have a buyer out here.

Q. Who is that—Mr. Bergovitz, or Mr. Bandovitz?

A. Mr. Bandovitz merely represented us at a few hearings because neither I or Mr. Brown were able to be here.

Q. In your answer you state that Gerry Horton—you deny that Gerry Horton has no assets other than exempt. What do you know about that?

A. I know nothing of Mr. Horton's finances.

Q. All right; do you know anything about Mr. J. D. Althouse's finances?      A. I do not.

Q. Do you know anything about the assets of Gerry Horton Farms?

A. I know nothing of that.

Q. Do you know anything about the assets of Gerry Horton Company?      A. No.

Q. Or the liabilities of any one of those?

A. I do not.

Q. Do you know anything about the liabilities that were incurred during the operations of raising potatoes on the Arvin property?

A. No, sir; I do not.

Q. Do you know anything about the liabilities that were incurred during the raising and growing of potatoes on the Shafter property?

A. I do not.

Q. You allege in your answer, further, that the Trustee neglected to take appropriate action to recover certain assets. You say there is a claim

(Testimony of Charles H. Kaufman.)

against Morris & Larkin for refund of rent. Do you know anything about that?

A. No, sir; I do not.

Q. Do you know anything about the alleged claim against Morris & Larkin for failure to furnish water?

A. No; I do not.

Q. Do you know anything about the alleged claim against the wife of J. D. Althouse for property that was transferred [35] from her to Althouse?

A. I do not.

Q. The only two partners in this partnership of Kaufman-Brown at the time this bankruptcy petition was filed, which was on or about the 5th of August, 1944, was yourself and the other co-partner?

A. That's right.

Q. And his name is what?

A. Albert H. Brown.

Q. What did your assets consist of at that time?

A. What did our assets?

Q. The partnership; not your individual; the partnership of Kaufman-Brown?

A. I don't know.

Q. Well, did the partnership of Kaufman-Brown have any assets at that time?

A. That's right; yes, sir.

Q. Do you know what they were?

A. Offhand, no.

Q. Did they have any liabilities?

A. I suppose all business has.

Mr. Colby: Just "yes" or "no."

(Testimony of Charles H. Kaufman.)

A. Yes.

Q. Do you know what their total liabilities were at that time?      A. No, I do not.

Q. Did the partnership own any real property?

A. What? [36]

Q. Real property?

Mr. Colby: Real estate.

A. No.

Q. What did their assets consist of?

A. Accounts receivable; merchandise; equipment.

Q. Do you have any idea of whether your assets exceeded your liabilities or your liabilities exceeded your assets at that time?

A. Our assets exceeded our liabilities.

Q. According to your book value?

A. That is correct.

Q. By approximately how much?

A. I don't know.

Q. Have you got any idea?

Mr. Kendall: In other words, you are trying to obtain the net worth?

Mr. Johnston: I don't care about the net worth, but we are entitled to know whether they were solvent or insolvent.

The Witness: You are talking about the firm of Kaufman-Brown?

Mr. Johnston: Yes; not individually.

A. I would say approximately \$100,000.

Mr. Johnston: I think that is all.

Mr. Kendall: Mr. Colby wants to know about Horton's testimony. Have you made any move on that? [37]

Mr. Johnston: We are waiting until this is done.

The Court: What about the originals of the contracts? Do you want to offer them in evidence?

Mr. Kendall: The actual originals aren't in.

Mr. Colby: We should offer them. I have no objection, so let's put them in.

Mr. Kendall: Let's put them in.

Mr. Colby: I think we should erase the pencilled markings.

Mr. Johnston: If you erase them it goes up and somebody wants to know what they are erased for.

The Court: Exclusive of the markings.

Mr. Colby: Do they have the same number as "D" and "E"?

The Court: No; let us call them "Respondents"—well they just happen to be "D" and "E". We will call them "Respondent's".

Mr. Kendall: "D" will be the 22nd of January contract and "E" is the 16th of November contract. Then we still have that chattel mortgage to introduce, of which I will get a certified copy.

The Court: These are admitted as Respondent's "D" and "E".



RESPONDENTS' EXHIBIT D  
AGREEMENT

This Agreement entered into this 22nd day of January, 1944 by and between Gerry Horton and J. D. Althouse, co-partners doing business under the firm name and style of Gerry Horton Farms, hereinafter referred to as First Parties, and Charles H. Kaufman and Albert H. Brown, doing business under the firm name and style of the Kaufman-Brown Potato Company, hereinafter referred to as the Second Parties.

Witnesseth:

Whereas, First Parties are the lessees of approximately one hundred ninety-two and one half ( $192\frac{1}{2}$ ) acres of land situated in the County of Kern and more particularly described as follows:

Northeast Quarter ( $NE\frac{1}{4}$ ) of Section Twenty-eight (28) and Northwest Quarter ( $NW\frac{1}{4}$ ) of Section Twenty-Seven (27), both in Township Thirty-two (32) South, Range Twenty-nine (29) East, M.D.B.M. and containing One Hundred Ninety-two and one half acres ( $192\frac{1}{2}$ ) more or less, upon which acreage First Parties are to plant, cultivate, raise and harvest a crop of potatoes; and

Whereas, First Parties are desirous of selling to Second Parties, and Second Parties are desirous of buying from First Parties an undivided 50% interest in and to the potato crop to be planted, raised and harvested upon the said acreage by First Parties;

Now, Therefore, It Is Hereby Agreed by and between the parties as follows:

1. First Parties hereby convey, bargain and sell to Second Parties an undivided 50% interest in and to all of the potato crops to be planted, raised and harvested upon the above described acreage during the year 1944.

2. Second Parties, in consideration therefor, agree to pay to the First Parties, a total sum of nineteen thousand two hundred fifty and no/100 dollars (\$19,250.00) on the basis of one hundred and no/100 dollars (\$100.00) per acre, said sum is hereby acknowledged by First Parties as having been paid in hand.

3. It is further agreed that any and all costs and expenditures incurred in raising and planting the potato crops on the above described acreage in excess of the sum of nineteen thousand two hundred fifty and no/100 dollars (\$19,250.00), which sum Second Parties have agreed to pay in the manner hereinabove set forth, shall be paid by First Parties. The costs incurred for harvesting said crops of potatoes shall be paid in the following basis:

Fifty per cent (50%) of the harvesting costs by First Parties and Fifty per cent (50%) of said harvesting costs by Second Parties.

4. The net proceeds or profits obtained from the sale of the potato crops are to be divided between the partners on the following basis:

Fifty per cent (50%) of the net proceeds to be paid to the First Parties and Fifty per cent (50%) of the net proceeds to be paid to the Second Parties, provided, however, that before a distribution of the net proceeds is made, Second Parties shall first be repaid the sum of nineteen thousand two hundred fifty and no/100 dollars (\$19,250.00), and after the repayment of said sum, First Parties are to be repaid any additional costs or advancements which they have incurred and paid, including the rent for said leased acreage, towards raising and planting said potato crops, over and above the sum of nineteen thousand two hundred fifty and no/100 dollars (\$19,250.00) paid by Second Parties to First Parties.

5. First Parties agree to maintain and keep full and accurate accounts of all transactions in proper books of account and shall enter or cause to be entered therein, a full and accurate account of all transactions entered into and made and of all expenditures incurred in the planting, raising, harvesting, etc., of the potato crops on the above described acreage.

(a) That the books of account and all other records to be kept by First Parties shall be kept in the place of business of First Parties at their office in the Sill Building, Bakersfield, California, and each of the parties hereto shall, at all times, have access to and may inspect and copy any of them.

6. First Parties warrant that the potato crops are free of any encumbrances or crop mortgages and agree to save Second Parties harmless from any crop mortgages or encumbrances on said potato crops.

7. It is mutually agreed by and between the parties hereto, that any losses that may be sustained in the planting, raising and harvesting of said potato crops, are to be assumed and borne as follows:

Fifty per cent (50%) of any losses to be assumed and paid by First Parties and Fifty per cent (50%) of any losses to be assumed and paid by Second Parties.

8. It is further provided that upon the harvesting of said potato crops Second Parties shall have the first right to purchase said potato crops, after same shall have been harvested, for a price equal to the prevailing market price for said potatoes; provided further, however, that in the event there is no prevailing market price for said potatoes upon harvest, Second Parties agree to handle said potatoes as agents for First Parties through the Terminal Market of Chicago, Illinois, and that Second Parties shall be entitled to charge the sum of ten cents (\$.10) per sack as commission for said services rendered on behalf of the partners hereto and agree to pay the money obtained from the sale of said potatoes through the Terminal Market of Chi-

cago, to the First Parties, subject to accounting and distribution as hereinbefore set forth.

In the event Second Parties exercise the right to purchase said potatoes, First Parties shall be entitled to add any markups permitted or allowed under and by virtue of any OPA regulations to the purchase price of said potatoes, and that the total amount of said mark-ups shall be divided between the parties hereto on the following basis:

Fifty per cent (50%) of the total amount of said mark-ups to First Parties and Fifty per cent (50%) of the total amount of said mark-ups to Second Parties.

9. First Parties agree to devote their best efforts towards raising, planting and harvesting said potato crops on the above-described acreage and to furnish any and all equipment that may be required.

10. First Parties agree to execute, concurrently with this agreement, as security for their faithful performance of this agreement, a crop mortgage covering the First Parties' interest in and to the above-described crops and further agree to execute a promissory note, made payable in favor of Second Parties, in the sum of nineteen thousand two hundred fifty and no/100 dollars (\$19,250.00).

11. A copy of said promissory note is set forth herein in words and figures as follows:

\$19,250.00

Bakersfield, Calif., Jan. 22, 1944

We promise to pay to the order of Charles H.

Kaufman and Albert H. Brown, doing business under the firm name and style of the Kaufman-Brown Potato Company, the sum of nineteen thousand two hundred fifty and no/100 dollars (\$19,250.00) on or before the 15th day of July, 1944 without interest.

This note is secured by a crop mortgage, and said note is subject to all the terms and provisions of that certain agreement executed the 22nd day of January, 1944, between mortgagors and mortgagees.

GERRY HORTON.

J. D. ALTHOUSE.

12. It is further provided that after the terms of this agreement have been fully complied with by First Parties and Second Parties herein that the Second Parties will surrender and cancel said crop mortgage and promissory note to First Parties. It is expressly understood that the crop mortgage and promissory note have been executed by the First Parties solely as security for the performance and conditions herein contained and for no other purpose and that the First Parties are not to be held liable to Second Parties for loss occasioned by inclement weather, acts of God, losses resulting from acts of war or loss resulting from causes which are beyond the control of First Parties.

13. In the event that any disagreements shall arise between the parties hereto in respect to any matter, cause or thing pertaining to said potato crops whatever, not herein otherwise provided for,



the same shall be decided and determined by arbitrators, and First Parties shall select one of such arbitrators, and Second Parties shall select one of such arbitrators, and both of such arbitrators shall select a third arbitrator, and the decision of two such arbitrators, when made in writing, shall be conclusive upon the parties hereto.

In Witness Whereof, the parties have hereunto set their hands the day and year first above written.

/s/ GERRY HORTON,

/s/ J. D. ALTHOUSE,

First Parties, d.b.a. Gerry  
Horton Farms.

/s/ C. H. KAUFMAN,

/s/ A. H. BROWN,

Second Parties, d.b.a. Kauf-  
man-Brown Potato Co.

## RESPONDENTS' EXHIBIT E

### AGREEMENT

This Agreement entered into this 16th day of November, 1943 by and between Gerry Horton and J. D. Althouse, co-partners doing business under the firm name and style of Gerry Horton Farms, hereinafter referred to as First Parties, and Charles H. Kaufman, and Albert H. Brown, doing business under the firm name and style of the Kaufman-Brown Potato Company, hereinafter referred to as Second Parties.

Witnesseth:

Whereas, First Parties are the lessees of approximately one hundred seventy-eight acres (178) of land situated in the County of Kern and more particularly described as follows:

All of the fractional Southwest Quarter (SW $\frac{1}{4}$ ) of Section Eighteen (18), Township Twenty-eight (28) South, Range Twenty-six (26) East, M.D.B.M., and containing one hundred eighty-six acres (186), more or less,

upon which acreage First Parties are to plant, cultivate, raise and harvest a crop of potatoes; and

Whereas, First Parties are desirous of selling to Second Parties, and Second Parties are desirous of buying from First Parties an undivided 40% interest in and to the potato crop to be planted, raised and harvested upon the said acreage by First Parties;

Now, Therefore, It Is Hereby Agreed by and between the parties as follows:

1. First Parties hereby convey, bargain and sell to Second Parties an undivided 40% interest in and to all of the potato crops to be planted, raised and harvested upon the above described acreage during the year 1944.

2. Second Parties, in consideration therefor, agree to pay to First Parties, a total sum of seventeen thousand eight hundred and no/100 dollars (\$17,800.00) on the basis of one hundred and no/100 dollars (\$100.00) per acre, said sum to be paid in

the following manner: First Parties hereby acknowledge receipt of the sum of five thousand and no/100 dollars (\$5,000.00) from said Second Parties, and the unpaid balance of the purchase price is to be paid upon execution of this agreement.

3. It is further agreed that any and all costs and expenditures incurred in raising and planting the potato crops on the above described acreage in excess of the sum of seventeen thousand eight hundred and no/100 dollars (\$17,800.00), which sum Second Parties have agree to pay in the manner hereinabove set forth, shall be paid by First Parties. The costs incurred for harvesting said crops of potatoes shall be paid on the following basis:

Sixty per cent (60%) of the harvesting costs by First Parties and Forty per cent (40%) of said harvesting costs by Second Parties.

4. The net proceeds or profits obtained from the sale of the potato crops are to be divided between the partners on the following basis:

Sixty per cent (60%) of the net proceeds to be paid to the First Parties and Forty per cent (40%) of the net proceeds to be paid to the Second Parties, provided, however, that before a distribution of the net proceeds is made, Second Parties shall first be repaid the sum of seventeen thousand eight hundred and no/100 dollars (\$17,800.00), and after the repayment of said sum, First Parties are to be repaid any additional costs or advancements which they have incurred and paid, including the rent for said

leased acreage, towards raising and planting said potato crops, over and above the sum of seventeen thousand eight hundred and no/100 dollars \$17,800.00) paid by Second Parties to First Parties.

5. First Parties agree to maintain and keep full and accurate accounts of all transactions in proper books of account and shall enter or cause to be entered therein, a full and accurate account of all the transactions entered into and made and of all expenditures incurred in the planting, raising, harvesting, etc., of the potato crops on the above described acreage.

(a) That the books of account and all other records to be kept by First Parties shall be kept in the place of business of First Parties at their office in the Sill Building, Bakersfield, California, and each of the parties hereto shall, at all times, have access to and may inspect and copy any of them.

6. First Parties warrant that the potato crops are free of any encumbrances or crop mortgages and agree to save Second Parties harmless from any crop mortgages or encumbrances on said potato crops.

7. It is mutually agreed by and between the parties hereto, that any losses that may be sustained in the planting, raising and harvesting of said potato crops, are to be assumed and borne as follows:

Sixty per cent (60%) of any losses to be assumed and paid by First Parties and Forty per cent (40%)

of any losses to be assumed and paid by Second Parties.

8. It is further provided that upon the harvesting of said potato crops Second Parties shall have the first right to purchase said potato crops, after same shall have been harvested, for a price equal to the prevailing market price for said potatoes; provided further, however, that in the event there is no prevailing market price for said potatoes upon harvest, Second Parties agree to handle said potatoes as agents for First Parties through the Terminal Market of Chicago, Illinois, and that Second Parties shall be entitled to charge the sum of ten cents (\$.10) per sack as commission for said services rendered on behalf of the partners hereto and agree to pay the money obtained from the sale of said potatoes through the Terminal Market of Chicago, to the First Parties, subject to accounting and distribution as hereinbefore set forth.

In the event Second Parties exercise the right to purchase said potatoes, First Parties shall be entitled to add any mark-ups permitted or allowed under and by virtue of any OPA regulations to the purchase price of said potatoes, and that the total amount of said mark-ups shall be divided between the parties hereto on the following basis:

Sixty per cent (60%) of the total amount of said mark-ups to First Parties and Forty per cent (40%) of the total amount of said mark-ups to Second Parties.

9. First Parties agree to devote their best efforts

towards raising, planting and harvesting said potato crops on the above-described acreage and to furnish any and all equipment that may be required.

10. First Parties agree to execute, concurrently with this agreement, as security for their faithful performance of this agreement, a crop mortgage covering the First Parties' interest in and to the above-described crops and further agree to execute a promissory note, made payable in favor of Second Parties, in the sum of seventeen thousand eight hundred and no/100 (\$17,800.00) dollars.

11. A copy of said promissory note is set forth herein in words and figures as follows:

“\$17,800.00

Bakersfield, Calif., Nov. 12, 1943

We promise to pay to the order of Charles H. Kaufman and Albert H. Brown, doing business under the firm name and style of the Kaufman-Brown Potato Company, the sum of seventeen thousand eight hundred and no/100 (\$17,800.00) dollars on or before the 15th day of July, 1944 without interest.

This note is secured by a crop mortgage, and said note is subject to all the terms and provisions set forth and contained within that certain agreement executed the 16th day of November, 1943, between mortgagors and mortgagees.

GERRY HORTON.

J. D. ALTHOUSE.”

12. It is further provided that after the terms of this agreement have been fully complied with by



First Parties and Second Parties herein that the Second Parties will surrender and cancel said crop mortgage and promissory note to First Parties. It is expressly understood that the crop mortgage and promissory note have been executed by the First Parties solely as security for the performance and conditions herein contained and for no other purpose and that First Parties are not to be held liable to Second Parties for loss occasioned by inclement weather, acts of God, losses resulting from acts of war or loss resulting from causes which are beyond the control of First Parties.

13. In the event that any disagreements shall arise between the parties hereto in respect to any matter, cause or thing pertaining to said potato crops whatever, not herein otherwise provided for, the same shall be decided and determined by arbitrators, and First Parties shall select one of such arbitrators, and both of such arbitrators shall select a third arbitrator, and the decision of two of such arbitrators, when made in writing, shall be conclusive upon the parties hereto.

In Witness Whereof, the parties have hereunto set their hands the day and year first above written.

/s/ GERRY HORTON,

/s/ J. D. ALTHOUSE,

First Parties, d.b.a. Gerry  
Horton Farms.

/s/ C. H. KAUFMAN,

/s/ A. H. BROWN,

Second Parties, d.b.a. Kauf-  
man-Brown Potato Co.

Mr. Kendall: The evidence in this proceeding is taken before Mr. Bergman, both as Referee and as Special Master, and is admissible both in the proceeding regarding the adjudication of Kaufman-Brown Company and the objection to the claim of Kaufman-Brown Company. [38]

Mr. Johnston: That is correct.

Mr. Kendall: It is understood that the matter is held open, also, as far as respondents are concerned, for any rebuttal testimony we may admit after taking the deposition of Mr. Horton?

Mr. Johnston: You are entitled to disclose any new evidence. How are we going to fix the date on that?

Mr. Kendall: We will have to stipulate to a continuance for a date certain, and if not ready by that time, stipulate to another continuance; file them with the court and get orders on them.

The Court: We will adjourn until two o'clock.

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### Afternoon Session

This matter came on regularly, pursuant to adjournment, at the hour of 2 p.m., of the same day, the same parties being present, and the following proceedings were had:

Mr. Johnston: It is stipulated that the claim of the Central Canal Company that was introduced as Trustee's Exhibit No. 15, in the sum of \$583.40, and shows items incurred in May and June, was for water furnished on the Shafter property?

Mr. Kendall: That is correct. [39]

Mr. Johnston: Could we also mark this as "15-a"? I will mark it on there with a pencil.

Mr. Kendall: In stipulating to those facts we, of course, are not waiving our objection to the claim being immaterial, inasmuch as we maintain that it is a separate obligation of the Farms and not an obligation of the respondents here.

Mr. Johnston: Yes. When I was referring to the Shafter property I was referring to the properties on which there was an agreement.

Mr. Kendall: Yes.

Mr. Johnston: Then it is further stipulated that Exhibit 14-a of the Trustee, that the sum of \$1744.40 is for electrical power furnished by the Pacific Gas & Electric Company to the Farms?

Mr. Kendall: To Arvin.

Mr. Johnston: To the Arvin property; for the period April 7 to June 7, 1944, and that the service to the Shafter farm property consists of the sum of \$246.16, \$550.72, and \$13.81, up to June 8, 1944?

Mr. Kendall: That is correct.

Mr. Johnston: And that the amounts as follows: \$112.82, \$168.15, and \$11.55 were also furnished to the Shafter property, but were after June 8 and up to and including August 4, 1944? [40]

Mr. Kendall: That is correct; which of course is also subject to our same objection as made to the other claim.

Mr. Johnston: Yes; that you are not liable. Now, that is the only two we have this afternoon.

Mr. Kendall: There is one other thing: the claim

of F. E. Peterson, \$112.33, which was introduced as a part of Trustee's Exhibit 5, isn't within the period of the Arvin transaction and also, on behalf of F. E. Peterson, whom we also represent, we wish that claim withdrawn as a claim against the Kaufman-Brown Company.

Mr. Johnston: We have no objection to Mr. Kendall's—he represents Mr. Peterson and if he wants to withdraw it, regardless of what the facts are, he can withdraw it.

The Court: That is only withdrawn as to any claim against Kaufman-Brown?

Mr. Kendall: That's right.

The Court: In the event there is any liability.

Mr. Kendall: Oh, I want that clearly understood: it isn't withdrawn against Gerry Horton Farms Company; they owe the claim; just that there is no claim against Kaufman-Brown Company.

The Court: This will be continued until September 13, on a Saturday. Is that all right?

Mr. Johnston: Yes.

Mr. Kendall: Yes. [41]

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State of California,  
County of Kern—ss.

I, Geraldine Hall, hereby certify: that I am an official phonographic reporter of the Superior Court of the State of California, in and for the County of Kern; that I was duly sworn by the Referee in

Bankruptcy to serve as reporter in the District Court of the United States, for the Southern Division of California, Northern Division, for the purpose of the hearing in the matter as entitled on the first page of the foregoing transcript; that I did thereafter report said hearing in shorthand and subsequently transcribed the same into typewriting; that the foregoing and annexed forty-one pages, comprising said transcript, contain a full, true, and correct transcript of my shorthand notes so taken.

Dated: Bakersfield, California, July 25, 1947.

/s/ GERALDINE HALL.

[Endorsed]: Filed July 22, 1948.

[Title of District Court and Cause.]

### TRANSCRIPT OF PROCEEDINGS

Hearing on Petition for Order Amending, Modifying and Changing Order of Adjudication, Held before Waldo R. Bergman, as Special Master, and Hearings upon the Objections of the Trustee to the Claim of Kaufman-Brown, held before Waldo Bergman as Referee in Bankruptcy, in the Office of the Referee, Morgan Building, Bakersfield, California, on Friday, March 21, 1947, at 10:00 a.m.

Counsel Appearing:

For the Trustee:

HARVEY, JOHNSTON, BAKER &  
PALMER

C. W. JOHNSTON, ESQ.

For the Bankrupts:

KENDALL, HOWELL & DEADRICH  
DONALD G. KENDALL, ESQ.

The hearing on Petition for Order Amending, Modifying, and Changing Order of Adjudication filed in the above entitled matter by the Trustee in Bankruptcy came on regularly before Waldo R. Bergman, as Special Master, at his office in the Morgan Building, Bakersfield, California, on Friday, March 21, 1947, at 10 a.m., of said day, and hearing upon the objections of the Trustee to the Claim of Kaufman-Brown came on before the said Waldo Bergman, as Referee in Bankruptcy, at the same time. Thereafter the following proceedings were had and testimony given, to-wit:

Mr. Kendall: At this time I wish to state, Mr. Referee, that Mr. Banowitz, for whom we have been continuing this matter from time to time, and who advised us that he wished to testify in this proceeding, advised us yesterday that he wasn't coming up and that he felt he did not want to testify now. This was a surprise to both Mr. Howell and myself as we have in good faith from time to time requested continuances while he was ill, which the Court was courteous enough to grant us, and now, after all, he says he doesn't think he has any information he



can help us with. He did request, however, that we take the deposition of Mr. Charley Kaufman and Mr. Brown in Chicago. I personally don't know what they can testify to, never having been able to talk to them personally on the matter. It appears, however, that from talking to Mr. Banowitz that there may have been a new agreement [2\*] after the execution of the other agreement, and the matter executed and handled.

The Referee: He should be here and testify on any new agreement. This is a Special Master's Proceeding which has been referred to me for the specific purpose of hearing the matters regarding this partnership arrangement between Kaufman-Brown and the bankrupt, and Mr. Banowitz has been here during the proceedings many times and although he has never testified as a witness and hasn't been sworn in as a witness, to my recollection, this is the time set for him to testify in this matter if he has anything to say regarding this partnership matter. Now, this has been continued at least ten times for him to come. At first it was decided by your office that the witnesses back in Chicago were the proper ones; subsequently you decided that they knew nothing about it, that Mr. Banowitz would be the one to testify, and then Trustee's counsel made arrangements for Mr. Banowitz to come here and be heard in this matter. Now, he was in the hospital and you and your partner, Mr. Howell, have requested continuances on the grounds that he was

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\* Page numbering appearing at bottom of page of original Reporter's Transcript.

unable to be here and he was given every opportunity to be here. You are not asking for a continuance, are you, Mr. Kendall?

Mr. Kendall: No, I can't ask for a continuance. The only thing I could ask at this time would be to have the matter submitted, subject to the submitting of the depositions [3] of Mr. Brown and Mr. Kaufman, and Mr. Johnston and I could get together on the subject of those depositions.

The Referee: Will you make a stipulation to that effect?

Mr. Johnston: I have some evidence to introduce.

Mr. Kendall: You go right ahead and introduce your evidence today.

Mr. Johnston: I also have to make arrangements with the bankrupt to be present. I have made arrangements with the bankrupt to make another trip out here, but on these continuances I couldn't do anything. I don't want ever to preclude somebody from testifying if they want to testify in a particular case. If I understand you, at first the two partners from Chicago were going to be present—I think that is what Mr. Kendall told me. It was continued for them to come. Then it developed that they didn't want to testify; that they didn't know anything about it; that only their agent Mr. Banowitz knew anything about it. I am willing to enter into a stipulation allowing them to take the testimony on oral deposition, and I will go back there and be present, with the understanding that both these people, the bankrupts, will answer all questions being propounded to them regarding the whole

transaction and regarding whether they were insolvent or solvent as far as their partnership was concerned, and themselves individually at the time this petition was filed, but I don't want to be in the position of having gone back there or having some attorney back there hired to take it and then the two people appear and refuse to testify.

Mr. Kendall: I will have it understood that they will testify and answer all questions concerning this transaction, or else the matter can be submitted without any depositions.

Mr. Johnston: They will answer all questions because this is a matter of having the partners adjudicated and themselves individually. We are entitled to know if they were insolvent or solvent at that time. If they are solvent they shouldn't be made bankrupts; if they are insolvent then they should be made bankrupts.

Mr. Kendall: Your position is, Mr. Johnston, that they are partners only in so far as this crop deal is concerned.

Mr. Johnston: As far as these contracts, they were in partnership on that.

Mr. Kendall: On the general farming crop, no; they were general farming partners as far as potatoes were concerned; yes. I do not think they were liable for the planting of the tomatoes, or for any brokerage transactions that the other company had. I won't admit legal liability under those contracts. I will state they executed the contracts and whatever the Court determines is their position, that is their

position under these contracts.

Mr. Johnston: When would you like to get these depositions? [5]

Mr. Kendall: I would like to get them as soon as possible. I would like to dispatch an airmail letter to Mr. Kaufman and have him communicate with me and talk to me not later than Monday and find out if he wants me to come back, or have a counsel there. Who can we take it before?

The Referee: You can take it before a referee.

Mr. Kendall: As soon as possible.

Mr. Johnston: I would say this: we can take it before a referee or a notary that any referee back there might designate. The referee might be busy in court or some other matters and couldn't hear it.

The Referee: You can make arrangements with a referee for a specific date that it may be heard. It might be well to have a Special Master's proceeding back there on this phase of it.

Mr. Johnston: I don't think it will be necessary to have a Special Master's proceeding. We can take depositions and have them referred back here. I think we can have the referee find a notary back there before whom the depositions can be taken and have subpoenas issued. I think that is all that is necessary.

Mr. Kendall: The referee himself wouldn't have to set on the matter.

Mr. Johnston: We could get a special order from the [6] Referee here. I presume, Mr. Kendall, those

depositions will be paid for by your clients and we can get a copy and pay for that?

Mr. Kendall: That is correct.

Mr. Johnston: But when those are complete I want a stipulation to take the deposition of the bankrupt who is in Kansas City.

Mr. Kendall: I would be willing to stipulate that should anything arise from the taking of those depositions requiring further testimony of the bankrupt, it can be taken in Kansas City.

Mr. Johnston: The bankrupt testified here some time before Christmas.

Mr. Kendall: We requested a copy of those proceedings and was informed no transcript had been taken.

Mr. Johnston: I think a reporter was here. I may be wrong.

The Referee: Mr. Howell was here, wasn't he?

Mr. Kendall: Yes; and he stated to me there was no report taken of the proceedings.

Mr. Johnston: I will say this: I have to have one of the bankrupts in court to finish up this testimony or take their deposition, and if I go back to take the depositions in Chicago I don't want to go to the expense of bringing the bankrupt out here when I am back there only a short distance [7] away and the deposition can be taken.

Mr. Kendall: Probably we can arrange it at the same time.

Mr. Johnston: Is that agreeable to you?

Mr. Kendall: That is agreeable; yes.



Mr. Johnston: When can this meeting be continued to, to give Mr. Kendall a chance—with this understanding: if you don't make arrangements with your clients so they are agreeable to going ahead with the deposition, my agreement to take the deposition of Mr. Horton will still be good to take that back there if he isn't available to come to Bakersfield.

Mr. Kendall: I might state this: that Mr. Banowitz has been more or less of a third party in the proceedings. He didn't negotiate the original transaction and apparently it turns out at the last minute that everything he knows about the deal is hearsay, from conversations with different people. Therefore, his testimony would not be of any value to us, although he kept calling and telling us he knew this and that and would send us papers which would show certain situations; we never got any of that and yesterday he refused to come up here. I want to give you the whole thing. So, now it has put us in the position of dealing directly with the Kaufman-Brown people and getting their reply. Now, if they say submit it as is, then I am willing to do so. If they want to go ahead and take these depositions, I am [8] going to have a transcript of this written up and send it back, so they can show it to their attorneys and they can see the exact picture and then advise me what they want to do. It shouldn't take a week, if it goes air mail, and they advise me promptly; then we can get the name of the referee. I guess Mr. Bergman can give us the



name of the referee.

The Referee: I thought you were going to use a notary.

Mr. Kendall: Or a notary, either one—and arrange a date for the deposition.

Mr. Johnston: But you did not answer my question. I said that regardless of whether they testify or not, I want a stipulation from you that I can take the deposition without me having to take the trouble——

Mr. Kendall: (Interrupting) I thought I had already granted that to you.

Mr. Johnston: All right. So that we don't lose the record on this, we ought to continue it until a certain time.

Mr. Kendall: I think we ought to have it wound up within thirty days.

Mr. Johnston: I want to continue this for a definite time within the next week or ten days, so you can report to the Court what your clients are going to do. If your clients are not going to testify then we can continue it to another date so see if I can get Mr. Horton here to testify.

Mr. Kendall: That is agreeable. You can set it up [9] ten days. But I wanted a copy of this so we can show them what position we have been put in here because neither Mr. Banowitz will testify or will they testify, so in order to present this to them I want to show them the record and say, "Here is the record; you can examine it and let me know what you can testify to." I think ten days would be enough.

Mr. Johnson: Then may it be continued for ten days so that Mr. Kendall can notify the Court definitely whether he wants to take the deposition of his clients Mr. Kaufman and Mr. Brown?

The Court: Yes; then ten days from now will be the 31st of March. We will continue the meeting to that time to hear from Mr. Kendall regarding these depositions.

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State of California,  
County of Kern—ss.

I, Geraldine Hall, hereby certify: that I am an official phonographic reporter of the Superior Court of the State of California, in and for the County of Kern; that I was duly sworn to act as shorthand reporter for the purpose of the hearing as entitled on the first page hereof; that thereafter I reported in shorthand writing the proceedings had and testimony given at said hearing, and thereafter transcribed the same into typewriting; that the foregoing and annexed ten pages contain a full, true and correct statement of the proceedings had and the testimony taken at the hearing of said matter and a full, true, and correct transcript of my shorthand notes taken of the proceedings had and testimony given thereat.

Dated: Bakersfield, California; March 24, 1947.  
/s/ GERALDINE HALL.

[Endorsed]: Filed July 22, 1948.

REPORTER'S TRANSCRIPT OF  
TESTIMONY OF GERRY HORTON

Appearances:

For the Trustee, Wayne Long:

HARVEY, JOHNSTON, BAKER  
AND PALMER.  
C. W. JOHNSTON.

For the Kaufman & Brown Potato Co.:

KENDALL & HOWELL.  
DONALD G. KENDALL.  
SAMUEL C. COLBY.

Bakersfield, California, December 8, 1947.  
1:30 P. M.

Mr. McGugin: I think if we would have some kind of statement as to the issues involved.

Mr. Johnston: There are two matters before the Court. One is on an order to show cause against the claim of Kaufman-Brown which was filed—I don't know what their claim was, twenty some odd thousand, I think, and that is based on the fact it cannot be told from the claim whether the claim is against the Company—see, there is two partnerships here—whether it is against the partnership known as the Company, or the partnership known as the Farm. And, then, it is also objected to on the grounds if it is against the Farm that it is not allowable as a claim against the Farm until all the other creditors have been paid. And I might state at the hearing—

Mr. Kendall: That doesn't seem to appear, Mr. Johnston, on the order to show cause.

Mr. Johnston: I might state: at the hearing that was had here, at that time the transcript shows that it was agreed—if I can find it in the transcript—it is on page 26 of the transcript—shows that Mr. Kendall states their claim, as against the Gerry Horton Company, is \$884.97. "The remainder of our claim arises from our financing of the Farm and is against the Farm." So anything on the other claim,— [2\*]

Mr. McGugin: How much was that, again, \$826.00?

Mr. Kendall: It is on page 26.

Mr. Johnston: It is against the Farms, \$884.97. Now, I have no objection to that amount being allowed against—not the Farm, but the Company. As against the Company, there is no objection to that being allowed. It was attached to their claim, and it shows that amount, and Mr. Kendall at that time stated there wasn't any other thing claimed against the Company on that claim.

Mr. McGugin: The attorney on the end; it is Mr. Kendall?

Mr. Johnston: That is at page 26. Now, the other is a matter here, it is a petition for an order amending and modifying the order of adjudication. There was three creditors signed a bankruptcy petition against the Gerry Horton Farms and the Gerry Horton Company. One of the creditors was the firm

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\* Page numbering appearing at top of page of original Reporter's Transcript.

of Kaufman & Brown. And we allege in our petition that they, at that time, were interested as partners, joint venturers; I don't know what charge it is; I haven't read the pleadings, now, but they were interested as partners, as joint venturers with Gerry Horton Company and Gerry Horton Farms, and that is in the complaint; that is, the Farms——

Mr. McGugin: That is the Gerry Horton Farms?

Mr. Johnston: That is the Gerry Horton Farms.

Mr. McGugin: And what is the name of the Company?

Mr. Johnston: Kaufman & Brown. [3]

Mr. Johnston: Now, there is introduced in evidence here—here is your exhibits that were introduced, and these, evidently, these two exhibits, were introduced by Mr. Colby as their exhibits; these are the original agreements; they are attached to the pleadings.

Mr. McGugin: The partnership?

Mr. Johnston: I think they dispute the question on the partnership. And we made these agreements, partnership agreements.

Mr. Kendall: To make the issue clear: we admit it is a straight financing deal, and they are not partners.

Mr. McGugin: And you represent?

Mr. Kendall: Kaufman & Brown. And the Trustee is maintaining we are partners and, therefore, liable for certain of the obligations in connection with the potato crops.

Mr. Johnston: Now, after the Trustee was appointed, these questions during certain hearings de-

veloped, and then the Referee asked Mr. Kendall if he was also representing the Trustee, and he discovered these facts and had to withdraw as attorney for the Trustee, as I say, as no criticism on Mr. Kendall; it was one of those things,—

Mr. Kendall: It was an apparent conflict of interests.

Mr. Johnston: —it develops. But our contention is this: Kaufman & Brown perpetrated a fraud on the Court; they knew at that time the existence of the contracts. If you look at the [4] contracts, it refers to them at certain places, in two particular places, maybe more, as partners. I don't think it is a contract alone for financing, as Mr. Kendall says, because, if you eventually read the contract, you will find out they sold a half interest in the potato crop to them under the contract.

Mr. McGugin: That is in, already in evidence?

Mr. Johnston: That is in, already in evidence. And, now, what we have asked for is the determination that Kaufman & Brown are partners in this joint venture for the purpose, only, of raising these potatoes according to the contract. There are other matters that this Farm Company had afterwards, or before, has nothing to do. Is that right, Mr. Colby? The question in dispute is upon the raising of the potatoes. Then, as I remember the record, why, we had a hearing before Referee Bergman on this matter, and there was certain testimony to him of Mr. Kaufman, I believe. Was it Mr. Kaufman?

Mr. Kendall: Yes.



Mr. Johnston: Then it was continued for Mr. Horton to appear, and it has been continued for various times. Now, Mr. Bergman was appointed as a Special Master to hear this, and there is a stipulation on file by counsel that all that evidence that was introduced in evidence heretofore by Mr. Bergman in the transaction can be considered by your Honor the same as if given before you.

Mr. McGugin: I believe, if I remember, there is a written [5] stipulation in the file to that effect.

Mr. Johnston: Yes, that is on file. Now, their answer here: they admit the qualifications of the Trustee, and they admit that the adjudication of these parties—and these contracts, they admit the contracts that have been introduced in evidence. But in substance they deny that these are partnership contracts. And they deny that there is any liability so far as they are concerned. Is that about the gist of the answer, Mr. Colby?

Mr. Colby: Now, may it please the Court, in order that your Honor may have a more specific view of the contention of these creditors, if your Honor has read these contracts—has your Honor read these?

Mr. McGugin: No, I haven't read the contracts. I have read the file but not the contracts.

Mr. Colby: Let me point out a few items in the contract.

Mr. Johnston: Mr. Colby, here is the thing: if you argue on the contract, we will not get through this afternoon. Can't we file briefs?

Mr. Colby: I am not arguing about the contract. Both contracts are almost verbatim alike, except the description of the premises, the date, and the amount; otherwise, they are word for word the same. One contract is dated November 16, 1943, and the other contract is dated January 22, 1944. Now, the purpose of the contract—I am only going to touch the [6] high lights—to start out with, this Horton and his partner, Althouse, sells to Kaufman & Brown Potato Company a half interest in a certain crop of potatoes to be grown; that is No. 1. Paragraph I of the contract states this sale in terms of a transfer; in other words, “the parties hereby convey.” The second paragraph recites the consideration, \$100.00 an acre, 160 acres. The third paragraph provides that in case the cost to the Gerry Horton Farms Company is in excess of this \$16,000.00, that excess is to be borne by the Gerry Horton Company. Paragraph IV—and here is where our dispute arises—is a contention of this creditor here, Kaufman & Brown Potato Company, that the word “partner” that appears in this Paragraph IV of both contracts is a clerical misprint and what was intended by the parties was the word “parties,” p-a-r-t-i-e-s, because all, throughout the contract they use the word “parties,” except in this instance and not another. I will call your attention, they use the word—all of a sudden the word “partners” appear. All right, I will skip Paragraph V, Books of Account. Paragraph VI is interesting, your Honor.

Mr. Johnston: Now, Mr. Colby, I don't object to this, but we are never going to get through if——

Mr. Colby: Let me have a minute. I didn't interrupt you. Bear with me, please. Two more points. Call your attention to Paragraph VIII. I want you to particularly, your Honor, to read that and digest it. There is a new situation entered [7] there. There, the bankrupt appoints the creditor or the other party to the contract as his agent to sell these potatoes when they are grown and raised, a new relation. Because your Honor well knows if you and I are partners one partner does not appoint another partner as agent. I am just calling that to your attention so your Honor will be governed when this evidence comes in. No. IX of the contract is interesting. There, the seller, which is the Gerry Horton Farms, agrees to the full terms of this potato crop; nothing mentioned about the buyer. No. X, to my way of thinking, your Honor, is the most important given to the interpretation; and your Honor called upon to interpret this contract, to decide whether this is a contract to finance a potato crop, or is this a partnership agreement making the partners liable for the debts. Paragraph X is a little unusual. And here is what these parties do and which bears out our contention it was a financing agreement: Section X provides that the seller shall give to the buyer, as security for this advance of \$16,000.00, a promissory note secured by a chattel mortgage on the crop to be grown. This chattel mortgage was duly recorded and is on file

in this file as an exhibit. Now, I will ask your Honor: Has it ever been heard of in the annals of law that one partner gives another partner a chattel mortgage. And, your Honor, if this were a partnership, the man would be taking a chattel mortgage on his own property. Therefore, with these ten points in mind and [8] listening to the testimony, I am not going to ask your Honor to decide, because your Honor won't, but have these ten points in mind when this testimony develops and your Honor is called upon to decide is this a partnership agreement or financing agreement.

Mr. Johnston: I thought you wanted to state the question instead of arguing on the question. Mr. Colby cleverly pointed out some things in the contract that is in favor of his client. But in one or two instances he hasn't given the Court fully all the information on it. For instance, he says, in Paragraph III, "All the cost shall be borne by Gerry Horton." That is not what it says. "The cost for harvesting said crop of potatoes shall be paid on the following basis:" It then goes, "Fifty per cent of the harvest cost by the first parties and fifty per cent of the harvest cost by the second party." And then it goes down in the next paragraph and says, "The net proportion of the profits of the sale of the potatoes is to be divided by the parties on the following basis:" And it says how it is to be divided. And then before Paragraph X, the last part of VIII, it says the losses—I think that is the one that says losses.

Mr. Colby: No. "Losses—Paragraph VII."

Mr. Johnston: Paragraph VII is the one that provides that the losses are to be paid fifty per cent by each of the parties involved. I don't want to point it all out, but I am [9] saying that you can't go by one thing. And I think that is something for us to do, is argue it afterwards, after we get this evidence in.

Q. (By Mr. Johnston): Have you been sworn?

The Witness: No.

Mr. Kendall: He testified before in the proceedings.

### GERRY HORTON

called as a witness on behalf of the Trustee and being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Johnston:

Q. Now, Mr. Horton, I had you check over the claims in the Gerry Horton bankruptcy matter yesterday with reference to claims that were against the Farm partnership, did I not? A. Yes.

Q. And on the claim of F. W. Frank, you found out that that claim was not against the potato deal?

A. That is correct.

Q. I am going to save time here, and whenever I refer to "the potato deal," it is in connection with this.

Mr. McGugin: So Kaufman & Brown would have no liability on that.

Mr. Johnston: I will give you that so you can

(Testimony of Gerry Horton.)

mark them down and eliminate it. (Hands paper to the Referee.)

Q. (By Mr. Johnston): Then on—I will give you something here—you checked the files and—I was talking to the [10] Court—in checking the files there, I notice that the claim of Irving Williams, an order was erroneously made out, and Mr. Calvin Conron represents the creditor, and there was an error in the amount of \$72.00; it is 768.65. It has no bearing on this Kaufman-Brown at all, but I would like that order to be signed, then that will straighten up the clerical error.

Mr. Kendall: That is not against the potato deal; is it?

Mr. Johnston: I am going to ask him.

Q. (By Mr. Johnston): The Irving Williams claim is not against the potato deal?

Mr. McGugin: Did I sign this order?

Mr. Kendall: No, Bergman signed the order. But I had an order against those people to see what it was, and the order drawn up recites \$72.00. We have noticed two amounts in their claim.

Mr. Johnston: It should be 768.65 instead of \$72.00; that is the correct amount. I checked it yesterday; I found it out.

Q. (By Mr. Johnston): This is the claim of Gundlach Sheet Metal. That was a claim for work on a house out here, and not on the potato deal. Is that correct? A. That is right.



(Testimony of Gerry Horton.)

Q. Now, the claim of R. E. Cady. You checked that, and that claim——

Mr. Johnston: I am asking him leading questions here. [11]

Mr. Kendall: Go ahead.

Mr. Colby: Go ahead.

Q. (By Mr. Johnston): That claim was not in connection with the potato deal; it was other insurance? A. That is correct.

Q. And the Barnett Tire Company; you checked that claim and that is not against the potato deal. Is that correct? A. Right.

Mr. Johnston: Now, I might state to the Court, if the Court will go up there, there is F. E. Peterson. At the prior hearing, Mr. Kendall also represents that creditor, and he withdrew that claim, as to any claim they might have against Kaufman & Brown, so far as that proceeding is concerned.

I will show you now, Mr. Kendall and Mr. Colby, all these claims. Some of these are not attached to the claims. You don't have any objection to that, because they were introduced as exhibits before, and I don't know the exhibits; I can refer to the claim without referring to the exhibits.

Mr. Kendall: Just so we will know the claim you are talking about.

Q. (By Mr. Johnston): This is a statement of the claim of the King Lumber Company. Will you look at that and tell us whether or not the merchandise that was received on that claim was

(Testimony of Gerry Horton.)

used in either one of the potato projects; that is, at Arvin, or Shafter, or both? [12]

A. I identify this as having been used on either one of the potato planting projects.

Q. The one that was operated in the spring of 1944 under this agreement with Kaufman & Brown?

Mr. Kendall: May we save time and confusion by cross-examining on each claim that is presented?

Mr. Johnston: That is all right with me. Go ahead, ask him anything you want.

Q. (By Mr. Kendall): How do you identify the claim as having been materials—as having been used in this deal?

A. From the fact these bills show here as having been contracted during the period of time we were doing nothing else but preparing to grow potatoes, and the lumber was purchased at that time, according to my recollection, for the construction of sluice boxes and things of that kind in the ditch work.

Q. And were those permanent improvements that could have been used for other and additional farm ventures beyond this transaction?

A. That is questionable. After being used in the season in open ditches, as a rule the wood is pretty well shot; it may not be. There might be some reclaimed. I wouldn't state that for sure.

Q. What I am getting at, Mr. Horton, would they be some improvement to the farm, that if they remained there the following year and you would

(Testimony of Gerry Horton.)

have been in business, they would have [13] been used thereon?

A. Some of that wood probably could have been used over.

Q. What I am further getting at is this: if any of these items remained, they wouldn't be the property of Kaufman & Brown; they would be your property? And if you went ahead and farmed and financed it the following year, you wouldn't have used those?

Mr. Johnston: That is argumentative. It is for the Court to determine under the contract who this belongs to. If this is a partnership between Kaufman & Brown, they would belong to the partnership.

Mr. McGugin: The contention is sustained.

Mr. Johnston: Probably this Referee doesn't know, but before we refer to the Shafter agreement and the Arvin agreement; the Shafter agreement is the one dated November 16, 1943. The Shafter agreement, when we refer to the Shafter property, instead of reading all the property description out, it is stipulated that when we refer to the Shafter property, that is the property that is involved in the agreement dated November 16, 1943. And the Arvin property is the one that is dated January 22, 1944.

Mr. Kendall: May I ask you a question here, counsel? When we came to the amounts of these claims, after discussing with you, you gave me a list of four claims you consider being possible claims

(Testimony of Gerry Horton.)

against this partnership or joint venture here, [14] the claim is not here of the King Lumber Company.

Mr. Johnston: No, sir, that isn't correct. There was an order introducing these, and we introduced some of these claims, and I told you at that time, and the record will bear me out, I would wait until he came out, because I didn't know.

Now, where is that? I don't need that. (Searching papers.)

Mr. Kendall: May I see that before you go ahead with Mr. Horton's testimony, your Honor?

Mr. Johnston: When you look at that, Mr. Kendall, the King Lumber Company claim was introduced in evidence, and the order approving it was introduced in evidence. One of those four claims I gave to Mr. Kendall, he says, isn't due.

Mr. Kendall: What?

Mr. Johnston: One of those four claims I gave to you, he says, isn't due.

Mr. Kendall: Yes, the Barnett Tire.

Mr. Johnston: The four creditors you said absolutely went on there, he says, didn't. So that is in your favor.

Q. (By Mr. Johnston): Now, Mr. Horton, I will show you—this was introduced in evidence as Exhibit 14-A before, and it is the—it is an itemized statement of the claim of the Pacific Gas & Electric Company. Can you tell from that claim whether or not electricity was furnished to either the Shafter farm or the Arvin farm, or both?

(Testimony of Gerry Horton.)

A. Yes, I can. [15]

Q. And that was during the time that—in 1944?

A. Yes.

Q. Can you tell what portion of that was furnished?

A. I believe all this, all of this bill, was for water furnished the Arvin and Shafter farms, with the exception of one item in the amount of 98.91, which had to do with another operation.

Q. You said “water.” You mean electricity?

A. Electricity, I should have said, yes.

Q. And on this statement, you checked all those items which were furnished to the—was the farm project?

A. I have.

Mr. Kendall: Let's see.

Mr. Johnston: Now——

Mr. McGugin: Ninety-eight; how much was that?

Mr. Colby: 98.91.

Mr. Kendall: Then from your total claim of 2946.52, we will have to deduct 98.91?

Mr. Johnston: Yes.

Mr. Kendall: Then isn't there a refund in addition, some additional credits?

Mr. Johnston: There was three thousand some dollars before, and in an order to show cause against it they came in and reduced it from three thousand odd dollars to that, and I got credit for that. [16]

(Testimony of Gerry Horton.)

Q. (By Mr. Johnston): Now, I will show you——

Mr. McGugin: Any cross-examination as to that?

Mr. Colby: Any cross-examination?

Mr. Kendall: No.

Q. (By Mr. Johnston): I will show you here this claim, it is marked 15-A and it was taken from the claim of the Central Canal Company, and ask you if you know where that water was furnished?

A. Yes, I do know where it was furnished.

Q. Where was it furnished?

A. On the Shafter piece.

Q. And was that furnished at the times mentioned in there and to the growing of these potatoes on this Shafter property in the year 1944?

A. Yes.

Mr. Johnston: Do you want to cross-examine him on that? That is the Central Canal Company.

Mr. Kendall: Only one question. On here he gave me a figure of 576.83, and it was 583.40.

Mr. Johnston: I will tell you what it was in their claim that is filed. They have interest, and I gave you that other without interest, so whatever it is they wouldn't be—the interest shouldn't go in there; that is the difference. Suppose you mark after that, Don, the interest is included?

Mr. Kendall: Yes. [17]

Q. (By Mr. Johnston): Now, the next item here is one marked 9-A; that is Bakersfield Hardware. Will you look at that and tell me if the merchandise



(Testimony of Gerry Horton.)

obtained on that was used on either one of these projects on which Kaufman & Brown were interested?

A. It is impossible for me to set off each amount correctly as having been used on either one of the two projects mentioned, but I know a portion of it was, things having to do only with potato planting; I know they were used on the potato deal. There may have been some items and——

Q. Can you look at that and tell us what was used on the potato deal and some weren't?

A. I can check the ones that were definitely used on the potato deal.

Q. All right, have you got a pencil?

A. Yes.

Q. All right, you check that.

Mr. Johnston: While he is checking that, we can save time. Mr. Kendall represents the Rosedale Warehouse Company, is the attorney of record for that creditor, and he is willing to stipulate or make a statement to the Court that that can be withdrawn as to any claim against Kaufman & Brown. Is that right?

Mr. Kendall: Yes, that claim is against a brokerage company and not against the Farms. [18]

Mr. Johnston: No, it is against the Farms. It has already been determined by the Court in a hearing had. It is for renting land out there in Edison, or some place like that. No, I am thinking of Irving Williams.

(Testimony of Gerry Horton.)

Mr. Kendall: Yes, I think you are.

Mr. Johnston: This, I checked with him the other day, and it is still against the Farms. If you say it isn't, you represent the creditor——

Mr. Kendall: Isn't that for potatoes purchased?

Mr. McGugin: We will take that other matter up in order, then.

Mr. Johnston: I was trying to save time here. I can find it, maybe. That is against the Company. Wait a minute, we have got two. There is one here. The other, it was three thousand and something, Rosedale Warehouse—3,511 against the Company. It is in here some place.

Q. (By Mr. Johnston): How many you got there?

A. After checking this thing over, I find I can identify—in fact, I can identify it by the dates as having been used on the potato operation entirely.

Mr. Johnston: You go ahead with your cross-examination if you want to. Here you are. See, this thing is headed "Gerry Horton Company Farms and Kaufman & Brown"; it is dated July 10, 1944.

Mr. Kendall: Apparently it was for digging and washing [19] some potatoes out at Shafter. Whether they were on this deal or potatoes he bought, he can testify.

Mr. Johnston: He has already testified to it.

Mr. Kendall: You had better put it on. I don't know. I was thinking of the other claim. I knew

(Testimony of Gerry Horton.)

that was definitely against the Company. I said I didn't know about this one.

Mr. McGugin: What claim are we considering now?

Mr. Johnston: He was on the Bakersfield Hardware. Do you want to cross-examine?

Mr. Kendall: No, no questions on the Bakersfield Hardware.

Q. (By Mr. Johnston): Now, Mr. Horton, during the year 1944, did you do anything on the Shafter property other than the raising of potatoes?

A. No.

Q. When you say "no," you mean that is all you did, was raise potatoes on the Shafter property.

A. That is all we did.

Q. Now, where is that again? I notice—I will withdraw that. Do you recall when they quit harvesting potatoes at Shafter?

A. Well, I can't describe the exact date, but I believe it was sometime in July of 1944.

Q. Well, I will show you the bill that is attached to the claim of Rosedale Warehouse, and it is charged to Gerry Horton & Company Farms and Kaufman & Brown; it is dated July 10, 1944. And would that help you out in refreshing your memory as to when they stopped digging potatoes at Shafter?

A. This, apparently, is an invoice for balance due. It is dated July 10. And knowing the practice of the Rosedale Warehouse Company, I pre-

(Testimony of Gerry Horton.)

sume that they presented this bill just about a day or two after our harvest was finished; so I judge we must have finished somewhere between the 4th and 9th or 10th of July.

Q. Now, this Pacific Gas & Electric Company bill, I notice some of those items run after June 8th there.

Mr. Kendall: Wait a minute. Are you going back on the P. G. & E. bill?

Mr. Johnston: Yes, I am going back on that. I am refreshing his memory on this to get the date.

Q. (By Mr. Johnston): Can you explain from that why those charges are from June 8 to August 4; the last one down here, for instance (indicating)?

A. On that last item, I imagine that that service was used in connection with our Farm help. It states here it is for lighting service for the residence located on that property.

Q. And that was during the raising of the potatoes?

A. Yes. We kept a portion of the crew out there all during that period.

Q. What I am getting at: You can't divide that up? [21] There is no way to divide that up from June 8 to August 4?

A. I don't know how it could be done.

Q. Now, referring to this Rosedale claim, it hasn't been introduced in evidence before. Will you look at that, and can you tell me if that claim is in

(Testimony of Gerry Horton.)

connection with this potato deal in which Kaufman & Brown are interested?

A. Yes, this claim is in connection with the Shafter potato growing project.

Mr. Johnston: I will ask that that claim be introduced, then, in evidence.

Do you want to ask him any questions on that, Don?

Mr. Kendall: Yes.

Q. (By Mr. Kendall): Do you know what the claim arises from, what it consisted of?

A. If you will let me see that. The first portion of the claim was, if I remember correctly, was on a clean-up of potatoes we had left in the warehouse from going to the dehydrater; the balance of the claim is for weighing and washing and digging of the potatoes, also for gasoline used in the tractor of the Rosedale Warehouse Company used in the digging of the potatoes.

Q. Now, did you hire the Rosedale Warehouse Company to dig your Shafter potatoes?

A. If I remember correctly, a portion of them. I don't know whether they dug them all, or we dug a portion of them. [22]

Q. It says "digging 54.7 acres." How many acres did you farm at Shafter?

A. We farmed right close to a hundred and eighty, if I remember correctly, so apparently, we dug part of our own.

Q. You don't recall, you can't definitely testify,

(Testimony of Gerry Horton.)

this was on your deal or on some potatoes you bought and run in there?

A. I can tell it was definitely on their deal, because I bought nothing in the way of acreage in Shafter that year.

Q. Did you broker any potatoes other than your own?

A. Anything I took out of Shafter that year were bought, scraped and washed, in carload lots only.

Q. You didn't buy any acreage and have it washed through the Rosedale Warehouse shed, other than the actual acreage you farmed under this financing deal with Kaufman & Brown?

A. To the best of my knowledge, that is correct.

Q. This bill represents potatoes grown by you in connection with this Kaufman-Brown financing deal?

A. Yes.

Mr. Kendall: I wish, then, Mr. Johnston, so the record is clear, as much as I represent two clients here and I represent Rosedale Warehouse in filing that claim, to state that the statement in withdrawing that was incorrect.

Mr. Johnston: Yes. When you talked to me over there, you said you thought it didn't belong, so I understood you were [23] withdrawing it.

Mr. Kendall: I understood at the beginning it was against the other Company, but apparently there are two claims, and so I will submit that on the facts.



(Testimony of Gerry Horton.)

Q. (By Mr. Johnston): Mr. Horton, I show you the claim here of A. H. Karpe Implement Company and ask you, yesterday, if you checked the items on there which you believe is in connection with the potato deal with Kaufman & Brown that were grown on Arvin and Shafter properties. Is that right? A. Yes.

Q. And those that are not checked on there are the items chargeable to the Arvin and Shafter property? A. Yes, that is correct.

Q. Let's see, they add up, for the purpose of the record they were added up, and they total 169.83.

Mr. Kendall: Out of the 265.64?

Mr. Johnston: Wait a minute. You are going too fast for me. Is that Karpe? Yes.

Mr. McGugin: The amounts are chargeable to whom?

Mr. Johnston: Kaufman & Brown.

Mr. Kendall: 169.83, according to his testimony.

Mr. Johnston: I want to introduce that claim at this time.

Mr. Kendall: Are you through examining on that?

Mr. Johnston: Yes. [24]

Mr. Kendall: Which items are the ones that are included on this, to save a lot of examining?

Mr. Johnston: He says the ones which are checked is the ones he testified to.

Mr. Kendall: Are included.

Q. (By Mr. Kendall): Mr. Horton, were you

(Testimony of Gerry Horton.)

farming beets out there at that time?           A. No.

Q. I notice an item in here of eight beet hoes. You don't use beet hoes on potatoes.

A. We used the beet hoes to clean out a portion of our acreage overrun with Russian Thistle. We had a crew of hands in there, pulling Russian Thistle out.

Q. It is an unusual condition to weed potatoes, that is why I was asking.           A. Yes.

Q. I notice—Only the ones that are checked are the ones they are claiming?

Mr. McGugin: That claim, as well as the Rose-dale Warehouse claim, will be received in evidence.

Q. (By Mr. Johnston): Now, we refer to the General Petroleum claim. I will show you that and ask you if you have eliminated any items on there as not belonging to the growing of potatoes with Kaufman & Brown on the Shafter and Arvin properties? [25]

A. Yes, I have eliminated some items.

Q. And those have been marked out?

A. Yes, they have.

Q. And so those items that are marked out should be subtracted from the total?

A. That is correct.

Q. Let's do that.

Mr. McGugin: While you are doing that, we will take a five minute recess.

After recess, all parties being present, the following proceedings were had:

(Testimony of Gerry Horton.)

Mr. McGugin: Are we ready to proceed?

Counsel: Yes.

Q. (By Mr. Johnston): Mr. Horton, here is a claim of Ace Tractor Company.

Mr. Kendall: You didn't get the amount of the preceding.

Mr. Johnston: He asked me the General Petroleum claim. Mr. Horton, he subtracted those figures, and it is 36.06 claimed against the potato deal. Is that right, Mr. Colby?

Mr. Colby: That is right. And I will ask that the claim be introduced in evidence.

Mr. McGugin: Received.

Q. (By Mr. Johnston): This exhibit is marked 12-A; it is the sheet from the claim of the Ace Tractor Company. Can you [26] tell me from that claim whether or not that was on this potato deal or not?

A. No. It is impossible for me to determine just what it was for.

Q. And you have no independent recollection of what it was for?

A. I know what the tractor would be for, but other than that I don't know, don't have any recollection.

Q. And you don't know when the obligation was incurred, what year?

A. No, I don't.

Mr. Johnston: All right, so that can be—this one of Ace Tractor Company couldn't be against them; from his testimony couldn't be against them.

(Testimony of Gerry Horton.)

Mr. McGugin: It would be against the Farms only?

Mr. Colby: Against the Company only.

Mr. Johnston: No, no, against the Farms. It is a claim in the bankruptcy, not against Kaufman & Brown.

Mr. Colby: I get it.

Mr. Johnston: I fixed this for the Referee, and I think that—there are the claims, and I think those are correct. Those are the claims against the Company; they have nothing to do with these proceedings, that is, right now.

Mr. McGugin: Yes, the same note is on there as to Irving Williams, then? [27]

Mr. Johnston: What?

Mr. McGugin: Should that Irving Williams also be 768?

Mr. Johnston: This should be off (indicating).

Mr. Kendall: You can't have them both.

Mr. Johnston: No, that should be off. That is how I noticed it, but——

Q. (By Mr. Johnston): I will show you Exhibit 18-A; it is the itemized statement of Stroud & Seabrook. Will you look at that and tell me whether any of that merchandise was used on either the Arvin or Shafter ranch in connection with this Kaufman-Brown matter?

A. Yes, that would have been used on either one of the ranches, because that is supposed to be

(Testimony of Gerry Horton.)

the only deal for which we would have bought irrigation pipe.

Mr. Johnston: All right, you can cross-examine.

Q. (By Mr. Kendall): There is an "alfalfa valve." You weren't raising any alfalfa there?

A. No, that is the name.

Q. That is the name of the valve. You use it for any crop?

A. Yes, when you farm land.

Q. (By Mr. Johnston): Now, here we refer to an itemized statement of the Wasco Hardware Company. Will you look at that and tell us if you know whether or not the merchandise received on that was used in connection with either one of the projects [28] in which Kaufman & Brown are interested?

A. Again judging from the dates, a portion of this account, at least a portion of this, of these items, were used on the potato growing activities.

Q. Well, can you tell what portion?

A. Yes. Their statement in the amount of 29.39, February 22, was used on the potato deal. Their statement for various amounts here, used in February, 1944, were on the potato account.

Mr. Kendall: 25.95?

Mr. Johnston: No, that couldn't be, Don. It hasn't been recapped.

Mr. Kendall: Oh, I see.

A. An item dated July 10, '44, was not used on the potato account.

(Testimony of Gerry Horton.)

Mr. Johnston: That is a credit (looking at bill).

A. Certain items dated in January, 1944, were.

Mr. Johnston: May I see this? This is all credit; that is washed off. Wait a minute. He says that wasn't it; that would be 12.56 off the total.

Mr. Kendall: 12.56 off 81.02?

Mr. Johnston: It will be 68.46. Is that correct?

Mr. Kendall: Yes.

Mr. McGugin: For?

Mr. Johnston: For Wasco Hardware. [29]

Mr. McGugin: Chargeable against the potato deal, also?

Mr. Johnston: 68.46 is charged against them. But if this hasn't been introduced in evidence, I want to introduce it in evidence now.

Mr. McGugin: So received.

Mr. Johnston: Now, you have seen these before, Don? I want to introduce in evidence at this time the chattel mortgage of the Kern County Bank as recorded in Book 1161— that is wrong—it is 1171, page 39. It has a copy of the note, and it is understood with Mr. Kendall we wouldn't have to introduce that original note.

Mr. Kendall: That is the original recorded instrument?

Mr. Johnston: Yes. I am going to introduce that but not the original note.

Mr. McGugin: Received in evidence.

Q. (By Mr. Johnston): Now, Mr. Horton, I will show you the Kern County Bank statement



(Testimony of Gerry Horton.)

with Gerry Horton Farms and ask you if the two deposits on there, one for five thousand and one for seven thousand five hundred, are the proceeds of the money that you received upon the bank loan of which you gave this chattel mortgage?

A. I believe that is correct.

Q. Now, I will hand you some checks here that—well, I will withdraw that. You went over certain checks, and they have been checked off on this statement; haven't they? [30]

A. Yes.

Q. And all those checks you checked off on those statements were used, the money was used, in the farm project, either at Arvin or Shafter, on which Mr. Kaufman and Mr. Brown were interested. Is that correct?

A. During those dates, any money used for—any money withdrawn from the bank must have been used on those two deals, because those were the only deals I was in.

Q. Now, I will show you the checks that you have checked off. I will show you the checks as checked off there and ask you to examine those checks and tell use whether that money was used.

Mr. McGugin: Will you give us the dates, too? Between what dates were these deals in?

Mr. Johnston: These were in January.

A. December of '43, to and including December 31st. You want me to identify each check?

Mr. Johnston: I have the check stubs; but if the

(Testimony of Gerry Horton.)

Referee wants you to identify each check, and the counsel on the other side do, there is the check stubs.

A. Our check 313 to the Treasurer of the United States in the amount of \$250.00 was for tractor rental, tractor which we rented from the Department of Agriculture here, for the preparing of our land in Shafter and Arvin. Our check 6, dated December 24, 1901— [31]

Mr. Colby: Just a moment; your Honor, it is going a little fast for me. I wish to raise an objection. I wish to know whether the Kaufman-Brown is going to be charged for the expense of the bankruptcy for him. Is that the theory?

Mr. Johnston: This money was used. I figure part of this money was used by the partners.

Mr. Kendall: This loan was a loan that Gerry Horton made with the bank and pledged his own acreage for.

Mr. Johnston: That doesn't make any difference. The money was used.

Mr. Kendall: In that account, you will have to have a complete accounting on the potato deal.

Mr. Johnston: We have had a complete accounting on the potato deal, and the orders to show cause have been issued, and they have been sent out by Mr. Bergman to your clients.

Mr. Colby: You didn't answer the other question. I don't understand it. Can counsel explain it?

(Testimony of Gerry Horton.)

Mr. McGugin: You don't have any objection to the form I can rule on.

Mr. Colby: Object; it is incompetent, irrelevant and immaterial, and it has no bearing on the issues of this case, and that the respondent on this order to show cause cannot be held or bound by any expenditure of the bankrupt while he conducted the business.

Mr. Kendall: I will supplement that by stating that the [32] only matter before the Court now is whether or not this claim of the Kern County Bank can be chargeable against the Kaufman-Brown.

Mr. McGugin: Now, you are——

Mr. Kendall: It is obvious that Horton goes out individually and borrows some money; that is owed by him, whether that money is afterwards put on the deal or whether he spends it himself. It still doesn't make Kaufman-Brown liable. The bank loaned money to Horton and not to this deal, or to any combination of Kaufman, Brown and Horton. They loaned it to Horton and took a check, a chattel mortgage, on certain equipment which is listed. And what Horton did with the money is his own business and doesn't bind anyone else.

Mr. Johnston: That is not correct. We are here for the purpose of finding out what was used on this project. Now, if this agreement, if they were partners, if the money was used in that project, the bank would be entitled to be reimbursed for the amount of the money. This money—and the checks

(Testimony of Gerry Horton.)

show; the witness will so testify when asked—the money was used to buy seed and potatoes to plant into the ground. And I don't have any objection to their questions and objections to go in the record, but I want to get the evidence in.

Mr. McGugin: Yes, I think probably their objection is more on the argument of whether or not there is any liability [33] on the part of Kaufman & Brown Company.

Mr. Kendall: That is correct, your Honor. To put it bluntly, if you and I were partners and we had a deal together, and I went to the bank and borrowed money to put in the partnership, that wouldn't make you liable.

Mr. McGugin: I think I will overrule the objection. That doesn't necessarily mean I have decided that Kaufman & Company are liable on this debt; but at the moment, until we get the evidence in, we won't decide on a question of law.

Mr. Colby: The witness testified as to the first check. Let him proceed.

Mr. Johnston: Here are your bank stubs. If you want to use them to look at here, you can.

A. Gerry Horton Farms, check #6, December 24, 15.01, Railway Express Agency, was for two sacks of seed potatoes for a test plot, sent from Minnesota.

Check 333, December 17, 18.00, labor.

Check 7, December 24, \$55.00, labor.

Mr. McGugin: Labor on the ranch?

A. Yes.

(Testimony of Gerry Horton.)

Mr. Johnston: It was either one or the other.

A. Check 337, amount 1743.53, was for a seed potato purchase.

Check 325, December 10, 1986.37, was for a seed potato purchase. [34]

Check 330, December 16, 337.06, was for freight charges on seed potatoes.

December 20, \$5062.50, was made to the Kern County Bank and apparently was in payment of a draft for seed potatoes, because the car numbers are listed in the voucher.

Q. (By Mr. Johnston): Will you look at the draft. By looking at the stub, can you tell from that?

A. Yes. I have the stub before me now, and that is correct.

December 21, check 2, 168.53, was for freight charges on seed potatoes.

Check 324, December 10, 23.43, freight charges on seed potatoes.

Check 329, December 11, 23.25, labor.

Check 328, December 11, 35.25, labor.

Check 334, December 17, \$18.00, labor.

318, \$40.00, December 9, labor.

Check 319, December 9, \$1000.00, to Gerry Horton Company. I will have to check that with the stub.

Mr. Johnston: You haven't got the stubs that far. I will look in this other book. Wait a minute.

A. 319——

Mr. Johnston: 319, you don't have any check stub on that.

(Testimony of Gerry Horton.)

A. The check is made out to Gerry Horton Company. It was a transfer of funds from the Farm to the Gerry Horton Company [35] and deposited in the Kern County Bank. I don't know what the reason was for the transfer, but that was what it was.

Check No. 3, December 23, 32.25, labor.

Check 335, December 17, \$8.00, labor.

Q. All right. Then look at your January statement from the Kern County Bank and refer to that portion above the place here, deposit 853.94, and I will ask you if you have gone through and checked off the checks in there which you believe is connected with the growing of the potatoes on the Shafter and Arvin Farms in which Kaufman and Brown were interested. A. I have.

Q. Do you have the checks there? Will you tell the Court the number of the checks and what they were for?

Mr. McGugin: The earliest date?

A. Beg your pardon?

Mr. McGugin: Is there another date involved here from January on this? Is this the same ranch, the same year?

Mr. Johnston: Yes, '44. It can be understood, I think, all these dates as referred to is from December—from November 16, 1943, to the year—sometime in the year '44; that is, when the potatoes were taken out.

Mr. Colby: Yes.



(Testimony of Gerry Horton.)

A. Check 8, December 29, 153.55, freight charges on the seed potatoes.

Check 9, December 29, \$15.00, labor. [36]

January 3, 21.12, labor; that was check No. 10.

Check No. 11, January 3, 112.50, labor.

Check 12, January 3, 77.25, labor.

Check 13, January 3, 60.75, labor.

Check 14, January 3, 12, labor.

Check 15, January 4, 208.06, freight on seed potatoes.

Check 34, January 10, 19.50, labor.

Check 35, January 10, \$35.00, labor.

Check 33, January 10, 22.43, labor.

Check 32, January 10, 29.25, labor.

Check 30, January 8, 168.53, freight on seed potatoes.

Check 28, January 8, \$250.00, rental on tractor.

Check 26, January 5, 12.06, to the Cousin's Tractor Co. I imagine that is repairs, but I don't know.

Q. If you don't know, then take it out.

A. Check 21, January 5, 20.32, King Lumber Company, with no notation on here. I am sure it must have been for lumber used in the potato farming operation at that time.

Check 17, January 5, 7.84, Bakersfield Hardware Company. I can't positively identify that.

Q. All right, let's leave that out.

January 5, 16, 267.92. It is made to the Egland Lumber Company, and that must have been for lumber used on the farming operation.

(Testimony of Gerry Horton.)

Check 36, January 11, 6.30, I cannot identify.

Check 41, January 11, 101.50, gasoline for the Shafter ranch from the Standard Oil Company.

23, January 5, 9.17, I am unable to identify.

Mr. McGugin: Let's see. You did identify this 41 check, did you not?

A. Yes. Check 326, December 10, '43, 116.65, freight on seed potatoes.

Check 327, December 11, \$48.00, labor.

Check 332, December 16, 30.75, labor.

Check 27, January 7, 75, labor.

Check 40, January 11, 32.01; that was not used in the potato operation.

Check 37, January 11, 12.30; again, that was not used in the potato operation.

I don't know what this one is; it is a voucher memorandum.

Mr. Johnston: December——

A. Here is the check. Apparently we forgot to use the word "Farm," and it was charged to Gerry Horton.

Q. That is the same thing as the check. Now, all of those that you speak about, that were used in the farming operations, were used either on the Shafter or Arvin farms in which Kaufman-Brown were interested, pursuant to this contract?

A. Yes.

Q. And these—I will take and show you: These checks, 36, 40, 23, 17, 26, 319 and 37, are checks that you can't [38] identify as being with the farming operations?

(Testimony of Gerry Horton.)

A. Yes, that is correct.

Mr. Johnston: Now, I will ask that all these be introduced in evidence.

Mr. Colby: Subject to the same objection for the record, your Honor; subject to the prior objection. It is incompetent, irrelevant and immaterial and not binding upon Kaufman & Brown.

Mr. McGugin: Yes, the objection will be overruled, and they will be received in evidence as a single exhibit.

Mr. Colby: No questions now.

Mr. Johnston: Where are those claims? May I have those?

Mr. Kendall: Yes.

Mr. McGugin: No questions on the checks?

Mr. Kendall: What is that?

Mr. McGugin: You have no questions on the cross-examination?

Mr. Kendall: No questions on the cross-examination.

Q. (By Mr. Johnston): Here is a claim of Larkin-Morris that has heretofore been introduced in evidence as No. 8. I will ask you to look at that claim, and particularly the itemized statement, and tell whether or not that has anything to do with either the Arvin or the Shafter farms, growing the potatoes in connection with the Kaufman-Brown deal?

A. Yes. This is for work done on the Arvin property, for leveling and scraping the land. [39]

(Testimony of Gerry Horton.)

Q. And which land was that?

A. That was the land at Arvin.

Mr. Johnston: Now, for the purpose of the record, I want to show here, as far as this claim is concerned, the agent of Kaufman-Brown claim that wasn't a valid claim, so at his request filed an objection to it, and it was set for hearing three or four different times, and he didn't show up.

Mr. McGugin: Who didn't show up, the claimant?

Mr. Johnston: Mr. Banowich—I don't know, whatever his name is——

(Off record discussion as to name.)

Mr. Kendall: Mr. Banowich.

Mr. Johnston: And Mr. Kendall tried to get him to come up, if he could, and he wouldn't show up; and we didn't have any evidence, and so this claim was allowed by Referee Bergman on the testimony of Mr. Morris. I have no objection at this time if Mr. Kendall wants to propound any questions to Mr. Horton as to the validity of that claim. And I say that as far as Mr. Kendall is concerned, so if they want to make any objections and later on it is possible to reject that claim they can, because Mr. Kendall still claims it isn't a valid claim. It has been allowed after a hearing, and I don't know what can be done.

Q. (By Mr. Kendall): Are you familiar with the transaction under which that claim arose?

A. Yes. [40]

(Testimony of Gerry Horton.)

Q. You had a lease, did you not, from Morris and Larkin?      A. We did.

Q. And that lease was to Gerry Horton or Gerry Horton Company?

A. Gerry Horton Farms, or Company; I don't know which.

Q. It is a written lease?      A. Yes.

Q. You don't have a copy of that in your file, do you? Are these copies the same? December '43 and the 31st day of December, the southwest quarter and the southeast one-half, the east half—are these other ones? They had several leases?

Mr. Johnston: This is the only one I can find in the file.      A. We had four leases.

Mr. Kendall: They had four leases covering that property. I ask that these be marked and introduced in evidence.

Q. (By Mr. Kendall): Now, those were the written leases you had covering all the land you were leasing from Larkin and Morris. Is that correct?      A. Yes, I believe so.

Q. And Kaufman & Brown were not a party to that lease, or had any assignments or interest therein?

A. No, they were not interested in the lease, nor an assignment of the lease.

Q. This deal with Kaufman & Brown, as shown by the agreements [41] on record here were only for the potato crop in Arvin and Shafter in the year '44?      A. That is correct.

(Testimony of Gerry Horton.)

Q. And your leases ran for several years, did they not? I believe they are five year leases?

A. The leases at Arvin, yes.

Q. That is what I mean: Your Arvin leases were for five years. This claim arises out of work done on the Arvin land? A. Yes.

Q. And under the terms of the lease you was to do the leveling of that land?

Mr. Johnston: I think the lease speaks as the best evidence, Mr. Kendall.

Mr. Kendall: I just wondered if he recalled the leases. As I recall it, they were to pay it—rather, level the land.

Q. (By Mr. Kendall): Did you make any separate agreement with them, other than set forth here, to modify the leases to have them do the work?

A. I don't recall having any oral agreement with them, or any other kind of agreement.

Mr. Kendall: That is the nature of the claim. We couldn't get Mr. Horton there to testify on that.

Q. (By Mr. Kendall): It is your statement you made no oral agreement with them modifying the conditions of the lease? [42]

A. No, that is correct.

Q. And you never agreed to pay this money?

A. No.

Mr. Kendall: Well, therefore, I object—I have made my objections, then, to this claim, and I object to the introduction of that claim against Kaufman & Brown on the grounds it is immaterial and irrelevant.



(Testimony of Gerry Horton.)

Mr. Johnston: It has already been introduced before.

Mr. Colby: So far as they are concerned?

Mr. Kendall: Not in this hearing.

Mr. Johnston: You check the transcript, then, the claims that have been considered and approved.

Mr. McGugin: I don't think the claim is valid against anybody.

Mr. Johnston: The Court has already ruled on that. If the Court wants another order or another citation——

Mr. McGugin: As I understand the lease, no modification of this lease is good unless written and executed.

Mr. Kendall: We did not have evidence to offer at the time, other than the leases and the writing there, and Mr. Horton, of course, wasn't here at the time, and he couldn't give the testimony he did today; but, in any event, it would be apparent, even if the claim was allowable against the bankrupt, it wouldn't be allowable against Kaufman & Brown because it would be an improvement of land over a period of [43] five years, as far as leveling is concerned, and not——

Mr. McGugin: No, I don't think it should be allowed against the potato deal. I think the Court will deny it right now.

Mr. Johnston: Of course, when you finally decide it is against the potato deal, if it is not against the potato deal, then these gentlemen are through as far as they are concerned.

(Testimony of Gerry Horton.)

Mr. McGugin: These four leases will be—do you think it is necessary to receive these in evidence?

Mr. Colby: Yes, it should be.

Mr. Kendall: It will show these leases were for a five year period, and they are on land—we don't want to clutter up the record, but we want to be safe on that. We will introduce them as one exhibit, but there was only one parcel of land out there, and he had four leases.

Q. (By Mr. Kendall): Is that correct? You had four leases out there? A. Yes.

Mr. McGugin: All right, so received in evidence.

Q. (By Mr. Johnston): Well, I will show you the claim here of Bakersfield Garage & Auto Supply Company, and ask you to look at that and tell us, if you can tell, whether or not that bill is connected with the Arvin or the Shafter deal of the growing of potatoes in the year 1944?

A. This claim is for repairs to one of the trucks used in [44] our operation; but it would be virtually impossible for me to state how much the truck was used in the potato operations as against any other operations it might have been used for.

Mr. Johnston: All right, do you want to ask him anything on that?

Mr. Kendall: No.

Q. (By Mr. Johnston): Now, I can't find the claim right now. There is a claim in there of an Ames, Harris Neville Company for 33.12.

(Testimony of Gerry Horton.)

A. It could only be for potato sacks, shims or twine.

Q. Do you know whether that is connected with the—do you know whether or not it is connected with the Farms, or not?

A. I couldn't state definitely, no, because it could have been for the previous year, having been potato sacks. I couldn't identify it positively.

Q. Here is the claim here for 33.12 and shows—it was in April?

A. There is no date on there, and I can't positively identify that as having been used.

Q. All right, that is not in. Now, there is a claim here of Meagher-Morris and Rexroth & Rexroth. We had those yesterday. All right. Now, can you look at that, the claim of Meagher-Morris and tell me what that is for?

A. That is for automobile repairs on either the trucks or the Studebakers, but I can't— [45]

Q. Can you identify it with these farm operations?      A. No, not that way.

Q. Now, here is Rexroth claim; Rexroth & Rexroth, it says. Now, will you look at that claim and tell whether or not the charges on that claim is connected with these deals Kaufman & Brown were interested in?

A. Yes, those charges were in connection with the Shafter operation.

Q. During the year 1944?      A. Yes.

Q. When Mr. Brown and Mr. Kaufman were interested?      A. Yes.

(Testimony of Gerry Horton.)

Mr. Johnston: Now, I see that claim hasn't been introduced. I will ask that that claim be introduced in evidence at this time.

Mr. McGugin: So received.

Q. (By Mr. Kendall): Mr. Horton, what was the clam bail digging operation on the farm at Shafter May 8th and 9th?

A. That was for a pump sump we had dug on the southwest corner of that property. Some of the potatoes were flooded, and we had to get rid of the water. We dug this sump and put on the pump.

Q. You were still digging potatoes there then?

A. Yes, on that portion of the land.

Mr. McGugin: Ames, Harris, etc? [46]

Mr. Johnston: We didn't introduce those because we couldn't sustain those.

Mr. McGugin: That Irving Williams?

Mr. Kendall: That was not against the potato deal.

Mr. McGugin: That leaves the claim of the Trustee for the Farms.

Q. (By Mr. Johnston): Now, you have looked at the claim here of the Trustee of the Company against the Farms; haven't you?

A. I don't know that I have.

Q. That one there (indicating).

A. Oh, yes.

Q. Now, all of the debts were paid off by the Company to the Farms; and, according to those records, there is due to the Farms—there is due

(Testimony of Gerry Horton.)

by the Farms, rather, to the Company a certain amount of money?

Mr. Colby: Just a minute, please, before you answer. It is objected to as calling for a conclusion of the witness and not the best evidence. I should be permitted to examine the witness on voir dire. I don't know what he is reading from, or what those memorandums are, who prepared them.

Mr. Johnston: All right, examine him.

Q. (By Mr. Colby): All right, Mr. Horton, you are examining a claim on file here. I don't know whether there is an exhibit number, or not. It is signed by Wayne Long. Who [47] is Wayne Long?

Q. (By Mr. Kendall): Isn't that against the Farms? A. Yes, it is against the Farms.

Mr. Johnston: Yes, that is what he testified to.

Mr. Kendall: It is a claim that inter-exchanges between the Farms and the Company.

Mr. Johnston: Here is the thing: I mean that is all the claims that have been introduced in evidence, because we represent all the creditors here, and I don't want one of those creditors to come back and holler. I have given the notice, and they didn't show up at the other hearing, and they didn't show up now, and here is the bankrupt; let him testify.

Mr. McGugin: Let me understand clearly—or correctly, that is.

Mr. Colby: I object——

Mr. Johnston: Wait until I get through, and then you can make your objection.

(Testimony of Gerry Horton.)

Q. (By Mr. Johnston): You examined this claim yesterday, this claim of the Trustee of the Company against the Farms; didn't you?

A. Yes.

Q. And that is, it shows a balance of 38,770.24. Now, there were only two claims here, two amounts, that you can identify with these farming projects. Is that right? You checked those off yesterday?

A. Yes.

Q. And both of those have been paid?

A. That is correct.

Q. So that on that claim there, there isn't anything that shows against either one of these farming projects?

A. That is right.

Q. That is, in which Kaufman & Brown are interested in?

A. That is right.

Mr. Kendall: All right.

Mr. Colby: All right.

Mr. Kendall: I think that completes the list.

Mr. Johnston: Now——

Mr. McGugin: Do you want me to make a finding of facts on this matter at this time, Mr. Johnston?

Mr. Johnston: No, I am not through. If I can find——

Q. (By Mr. Johnston): Now, I will show you Exhibit 4 that was introduced as Exhibit 4 before, the First Report and Account of Trustee and Petition for First Dividend, and refer you to the page—at the heading that is marked "Farms," and it



(Testimony of Gerry Horton.)

is marked Exhibit B-1, being the receipts in connection with the Farm, and I will ask you to look down that report and tell me if any of those receipts came from the potato operation which Kaufman & Brown is interested in.

A. The accounts receivable, I can't identify at all.

Q. You believe this came from the Kaufman & Brown potatoes [49] out there?

Mr. Kendall: From the sale of potatoes.

A. I believe so.

Mr. Johnston: Can we check this, your Honor? Can I check that?

Mr. McGugin: Yes.

Mr. Johnston: All right.

A. The sale of the Banducci lease to Kaufman & Brown——

Q. (By Mr. Johnston): Now, here is the Lebec Potato Company, so many sacks of potatoes. Those, that item is for——

Q. (By Mr. Kendall): Those are sacks?

Q. (By Mr. Johnston): Those were purchased in connection with Kaufman & Brown, and then sold in the bankruptcy?

A. Yes, that is right.

Q. (By Mr. Kendall): The pipe was used in the farming operations?

A. Yes, it was all used in our farming operations; some of it could be used in our potato operations. I don't know.

(Testimony of Gerry Horton.)

Q. (By Mr. Johnston): It was purchased with the funds from the potato deal?

A. Some of it could have been, and some of it we had before.

Q. Do you know how much?

A. No, I don't know how much pipe was purchased during the latter part of '43 and '44. I know definitely that a [50] portion of that pipe was used in the potato deal. How much, I don't know.

Q. It wasn't whether it was used; that wasn't the question. It was whether it was purchased in this operation. Anything that was received as receipts from the operation of that potato contract.

A. I know some pipe was purchased for that potato deal; how much, I don't know.

Q. Would it be half of it you had used there, or a third of it?

A. I would say we purchased about half, yes. This potato roller was purchased for that deal. And this Killifer carrier and ditcher was purchased. Twelve bundles of twine were purchased for the potato deal. Two hundred gallon gas tank; a thousand gallon gas tank and pump, and five grease guns, and ten-foot G. B. Scraper.

Q. Now, during the year 1944, did either Mr. Kaufman or Mr. Brown come to Bakersfield?

A. Yes.

Q. Which one?

A. Both of them came at different times.

Q. Where did they have an office?

(Testimony of Gerry Horton.)

A. They had no office of their own.

Q. They used your office, didn't they?

A. Yes, when they wanted to. [51]

Q. And were your books open to their inspection at all times?

A. Yes, any time during business hours, or any time they wanted to see them.

Q. I want to clear this up. This is not in connection with this, but I want to ask you this to clear the record. Your books show in this account—based on the books show—that Kaufman & Brown is indebted to the Company, and I forget the amount, some odd three thousand dollars. Now, your recollection is that Kaufman & Brown paid up everything due to the Company, and there was nothing due by them to the Company?

A. That is correct. I didn't know. I didn't remember that they owed anything.

Q. The reason I am doing this: that is the record I got when the thing was turned over to me. It shows that there was an indebtedness. While you are here, I am going to clear it up; I want to get the right amount. It shows there is a balance due to the Company of 3,170.74.

A. To the best of my knowledge, they didn't owe us anything.

Q. It was paid up?

A. That is right.

Mr. Johnston: Now, if it hasn't been introduced in evidence, for the purpose of the record I want to introduce the involuntary petition that was filed.

(Testimony of Gerry Horton.)

Mr. McGugin: All right, so received.

Mr. Johnston: I don't know if it has been introduced, or not.

Mr. Kendall: It is an exhibit down there.

Mr. Johnston: I don't know whether he admitted it, or denied it, or what.

I think that is all.

### Cross-Examination

By Mr. Colby:

Q. Now, Mr. Horton, prior to your execution of the first agreement——

Mr. Johnston: Is he your witness now?

Mr. Colby: What?

Mr. Johnston: Are you calling him as your witness?

Mr. Colby: Not yet. Let's see how far I can go on cross-examination.

Mr. Kendall: They were introduced and discussed.

Mr. Colby: The contracts were introduced?

Mr. Johnston: Go ahead and ask him.

Mr. Colby: This is preliminary, anyway.

Q. (By Mr. Colby): The first agreement that has been produced in evidence, dated November 16, 1943, how long had you known Kaufman and Brown prior to that, approximately?

A. I had known—well, I never knew them very well. I was acquainted with them as having been in the industry for several years. [53]

(Testimony of Gerry Horton.)

Q. Had you ever done business with them before?

A. No.

Q. At that time, November 16, 1943, what was your business or occupation?

A. Distributing and growing of potatoes.

Q. Under what name did you operate?

A. Gerry Horton Company, and Gerry Horton Farms.

Q. And who else was interested with you in that business?      A. J. D. Althouse.

Q. And was that a copartnership between you and Mr. Althouse?      A. Yes.

Q. And did you keep separate operations, the Farms and the Company?

A. We had separate sets of books, I believe. As we progressed in our operations, the activities of one was more or less affiliated with the other. In fact, we were sometimes mixed up together.

Mr. McGugin: I think we will take a five minute recess at this time.

After recess, all parties being present, the following proceedings were had:

(After recess, all parties being present, the following proceedings were had:)

(The last question and answer above are read by the reporter.) [54]

Mr. Colby: What was the operations of the Gerry Horton Company?

(Testimony of Gerry Horton.)

A. The Gerry Horton Company was primarily a distributing agency, a sales agency, and a means by which we distributed the produce of the Gerry Horton Farms.

Q. Prior to the November 16, 1943, did you have any conversation with Mr. Kaufman or Mr. Brown?

A. Prior to?

Q. That is, the date of the first contract.

Mr. Johnston: Now, I am going to object to this as not proper cross-examination. There is nothing having been asked in direct by me of this witness as to either one of these contracts.

Mr. Colby: Except the introduction of the contracts.

Mr. Johnston: Those contracts were introduced by you at the last meeting.

Mr. Colby: To avoid any question about it, your Honor, instead of calling it cross-examination, let's call him as our witness.

Mr. Johnston: All right.

Mr. Colby: After all, it is testimony before the Court, I think, that is going to be determined; not whose witness it is.



GERRY HORTON

as a witness for Kaufman & Brown, testified as follows: [55]

Direct Examination

By Mr. Colby:

Q. So the question was: Did you have any conversation with either one of those men, Mr. Horton?

A. That date, was that the date the contract was written?

Q. I will show you those contracts here that have been introduced into evidence.

Mr. Kendall: There is one on the Shafter and one on the other one. They are both practically the same.

Mr. Colby: 16th day of November, 1943; did you have a conversation prior to that date?

A. Yes, I talked to——

Q. How long prior?

A. Oh, I imagine a month or so.

Q. And where did that conversation take place?

A. In Chicago.

Q. And what place in Chicago?

A. In the Kaufman & Brown Potato Company.

Q. And was there anyone else present besides yourself and Mr. Kaufman?

A. Mr. Brown was present.

Q. Will you give us the conversation. What did you say, and what did Mr. Kaufman and Brown reply.

Mr. Johnston: It is incompetent, irrelevant and

(Testimony of Gerry Horton.)

immaterial, and in no way binding unless it is first shown that this contract here that is introduced in evidence is the subject of [56] the conversation.

Mr. McGugin: Well, we don't know whether it is material, or not, until we find out what the conversation is. We will make it subject to a motion to strike. I will let the testimony go in until we find out whether it is relevant, or not, subject to a motion to strike.

Q. (By Mr. Colby): Give us the conversation, what each of you said.

Q. (By Mr. Johnston): What do you remember, in substance?

A. I don't remember what the conversation was; but generally speaking: I went in to see Kaufman & Brown for the purpose of obtaining money to grow and harvest a crop of potatoes. And after explaining to them the deal I had to offer——

Q. (By Mr. Colby): Can you tell us what you said to them, in substance?

A. Well, in substance, I told them I had so many acres.

Q. How many acres?

A. Well, I explained the total acreage of the Arvin deal and the Shafter deal; told them those acreages were available, and I offered them all, or a part of them, on a basis of an advance of so much money an acre.

Q. Do you remember how much?

A. One hundred dollars; I believe it was the

(Testimony of Gerry Horton.)

amount that was brought up in this hearing. And I believe they asked me [57] what my leases were, and the state of my financial responsibility, and my experience, and so on and so forth. And they indicated interest in what I had to offer and suggested they would give me—no, I believe before I left that night they agreed to take a portion of the deal I offered to them, with an option to take the whole thing the next day, at which time I was to call on them on the next stop of my trip.

Q. Did you call them? A. Yes, I did.

Q. How much time elapsed from the time of your first conversation and the second conversation? A. Just over night.

Q. And did you have a conversation with them?

A. I did.

Q. What was the substance of that conversation?

Q. (By Mr. Johnston): Where was that at?

A. I was in Minneapolis, called Mr. Kaufman, and he said they had decided to take the entire deal, and asked me how I wanted the money to be sent to me, and I gave him the instructions to forward a certain amount—I don't know what it was—to my credit in the California bank. And I told him, or he said what would we do about contracts, and I said I would have them drawn up here and send them back to Chicago for his signature, and so forth and so on.

Q. (By Mr. Colby): All right. At that time, Mr. Horton, [58] was this in reference to the

(Testimony of Gerry Horton.)

Shafter and Arvin lease? Did you have a lease on the Shafter property?

A. Yes, I believe we did.

Q. Was that a term lease? How long a period was that Shafter lease?

A. If I remember correctly, it was a year to year lease with options. No, it was a one year lease with an option for so many more years.

Q. Now, in your conversation with Mr. Kaufman, was there anything said by you or Mr. Kaufman that you were to engage in a partnership in this?

Mr. Johnston That is objected to as incompetent, irrelevant and immaterial; not binding upon us at all. The contract is the best evidence.

Mr. Colby: All right, are you through, counsel? May I direct your Honor's attention to the state of the law as it existed? If a contract is clear, it requires no interpretation. The law is no oral

or parol evidence may be introduced to vary or change its terms. However, if the contract is ambiguous—and here, again, your Honor, it is the cart before the horse—the first thing your Honor will have to decide: Is this an ambiguous contract. It is the respondent's contention that any casual reading or even a careful reading should convince you, sitting there as a Special Master in this case, that this contract is ambiguous. If it [59] is ambiguous, then we are entitled to show the intention of the parties. If it is not ambiguous, then

(Testimony of Gerry Horton.)

this would be incompetent, irrelevant and immaterial, and should be sustained. Therefore, I suggest that the evidence be introduced or offered, and then wait until your Honor determines and rules after your Honor decides our primary question. If your Honor wants any law on it, I have prepared myself for it.

Mr. McGugin: No, I don't think we went to that point of law. I think the objection as made should be overruled first, because I think it does call for a legal conclusion. It doesn't have any weight with me that they had any discussion as to partnership, because that is a legal question, a question of law which, of course, this witness cannot determine.

Mr. Colby: That is right. I am not asking if there was a partnership. I am asking him if he used the words "partner" or "partnership" in his conversation with Mr. Kaufman and Mr. Brown.

Q. (By Mr. Colby): Were those words used?

A. I can't remember that the words were used, but I don't imagine they were.

Mr. Johnson: I object to that as incompetent, irrelevant and immaterial.

Mr. McGugin: It is so ordered.

Mr. Johnson: The answer stands he didn't know what was said or refused to answer. [60]

Q. (By Mr. Colby): Mr. Horton, when you first approached Mr. Kaufman, will you give us, to the best of your knowledge at this time, just

(Testimony of Gerry Horton.)

what proposition did you make him? What did you ask him to do for you?

A. I asked him to advance so much money for the fund of my potatoes.

Q. On land on which you held a lease?

A. Yes.

Q. Did you tell him, in addition to your experience, you had any equipment? A. Yes.

Q. What did you say to him about the equipment you had?

A. I don't know what was said. I simply described the equipment as being sufficient to operate the acreage which I had leased.

Q. Now, during this conversation with Mr. Kaufman, let's take first—the Arvin deal was first, is that correct, or the Shafter deal first?

A. The first what? To harvest?

Q. The first in signing.

A. No, I believe the——

Q. November 16, which deal was that?

A. That would be the Shafter deal.

Q. All right, the Shafter deal was first. Was there any discussion between Mr. Kaufman and yourself as to what interest [61] he was buying from you in this potato crop to be grown?

Mr. Johnston: Your Honor, the same objection to that. The contract speaks for itself. It shows what interest each party was to have, and anybody can interpret that; there is no dispute on that.

Mr. Colby: This was just preliminary, your



(Testimony of Gerry Horton.)

Honor; it is sensible. Let me put it this way—all right, counsel is correct. I was trying to save time.

Q. (By Mr. Colby): I will call your attention to this agreement. You have it there? Paragraph I recites as follows: “First party hereby conveys, bargains and sells to the second parties an undivided forty per cent interest in and to all the potato crops to be planted, raised and harvested upon the above described acreage for the year 1944.” In addition to your discussion as to what interest you were conveying and selling, was there any discussion as to any leases covered by your operations?

A. I don’t remember, of course, just what our conversation was. Wouldn’t that also be contained here?

Q. I am asking you to go back and refresh your recollection.

Mr. McGugin: He is asking about this discussion.

Mr. Johnston: You can answer what you remember back. If you don’t remember it, you don’t remember it.

A. I can’t remember, definitely the discussion as to [62] leases, but I can give you an answer by remembering what I heard passed in this hearing a little while ago in reference to the contract, but I can’t remember myself.

Q. (By Mr. Colby): Let me ask you this: Was it your intention—don’t answer until I finish my question—was it your intention at that time, before

(Testimony of Gerry Horton.)

the execution of this contract on November 16, 1943, to have Mr. Kaufman and Mr. Brown of the Kaufman-Brown Potato Company pay in any losses?

Mr. Colby: Before you answer—you have an objection?

Mr. Johnston: As to what his intentions were isn't competent evidence at all. A man's intention—it is what the conversation was, not what a man intended.

Mr. McGugin: I don't think that is a separate fact. It wouldn't bring about or change any legal relationship. I think the objection is good. I will sustain it.

Mr. Colby: This one case—well, I won't argue the law. I will argue the law later on.

Q. (By Mr. Colby): Now, during the time that you conducted these operations on the Arvin and Shafter deals, this potato crop, were you engaged in any other business during that period of time?

A. Yes, I was engaged in the buying and selling and speculating in potatoes and produce in general.

Q. I see. Of which the Kaufman-Brown Potato Company did not share? [63]

A. They had no share in the outside operations.

Q. All right. After two conversations you testified to, did you come back to California, to Bakersfield?

A. Not immediately afterwards.

Q. Yes, but shortly thereafter? A. Yes.

Q. And did you hire counsel to draw up the agreements dated November 16, 1943, and January 22, 1944?

A. I did.

(Testimony of Gerry Horton.)

Q. And who was this counsel you retained?

A. Morris Chain of the firm of, the firm of Claflin & Chain.

Q. Did you give Mr. Chain instructions as to what to prepare in the form of an agreement between yourself and the Kaufman-Brown Potato Company?

A. I related the conversation that Mr. Kaufman and I had had, the three of us had, together.

Q. Was it the same as you have just now testified to?

A. Yes, the same conversation that we had. I gave him the structure of our affairs.

Q. Could you tell us now what you gave him?

A. Well, I can sketch it, I guess. I told him that Kaufman & Brown would advance us \$100.00 an acre, and that on all our potato operations—the one operation at Shafter and one at Arvin—I was to supply all the equipment that I had and throwed our leases into the deal for what they were [64] worth and that we were to plant and harvest a crop of potatoes; that on one lease Kaufman & Brown were to get a certain percentage and another lease they were to get a different percentage. And the contracts were drawn, then, on the basis of my instructions to Mr. Chain. I signed them.

Q. Now, just a minute before you go further. Have you given us now all the instructions you gave Mr. Chain concerning the terms of the contracts, of these contracts?

(Testimony of Gerry Horton.)

A. Undoubtedly I haven't given you all the instructions; I gave you the substance.

Q. Yes, have you given us the substance of all of them?

A. Well, let's see, then—generally speaking, yes. If you want me to pin this thing right down to the last word, I will have to refer to the contracts.

Q. I am trying to ask you what you said before the contracts were drawn. We have the contracts before us. What I am trying to arrive at is what was said or done before these contracts were drawn. Did you tell him something about a chattel mortgage?

A. Oh, yes.

Q. Now, of course. Let's go back. Wasn't that conversation between you and Mr. Kaufman about a crop mortgage?

A. Yes.

Q. What was said by you?

A. They asked me in that conversation what I had to secure [65] their investment, and I told him I had my equipment, which, I believe, at that time was clear; and my reputation, for what it was worth for that type of operation; and, in addition, I was willing to offer them a crop mortgage on the two pieces of land that we were to farm.

Q. Then you came to Bakersfield, and you related that conversation to your attorney; did you not?

A. Correct.

Q. That is why these notes and crop mortgages were executed by you?

A. Yes.

Q. In your conversation with your counsel, did you tell him that this was to be a partnership

(Testimony of Gerry Horton.)

agreement? Did you use the word "partnership"?

Mr. Johnston: Just a minute. It is leading and suggestive. This isn't cross-examination.

Q. (By Mr. Colby): I will put it that way. Will you state whether or not you used the words "partner" or "partnership" to your counsel.

Mr. Johnston: It is objected to.

A. Knowing what this contract says, I can't remember exactly what—the words I did use. I can make it a—guess at it, or tell you what I think.

Mr. Johnston: That is not what they want, is what you remember; if you don't remember, you don't remember. [66]

Q. (By Mr. Colby): As a matter of fact, wasn't it your intention to enter into a partnership, again?

Mr. Johnston: I object again. It is incompetent, irrelevant and immaterial, what his intention was. If I go down and sign a note at the bank and later on say it wasn't my intention to sign the note—what his intention was doesn't have anything to do with it. If it is competent—I don't think it is. It is leading up to the contract. If he comes in here and says what his intention is, that is not competent.

Mr. Colby: If the Court please, if I go to the bank and secure a note, I cannot claim I did not intend to sign a note. But, our Honor, if I sign a memorandum I think is an option and then it turns out to be a mortgage, I have the right, and the authorities so hold, to explain that my inten-



(Testimony of Gerry Horton.)

tions were, if the Court please, was not to give a chattel mortgage or mortgage; it was to give an option. Just giving that as an example, your Honor. And that is why the intention of these parties is vital to a determination, particularly, your Honor. This isn't in dispute between the two parties to the contract; there is no dispute between them as individuals. This is a third party coming in, to wit: creditors in a bankruptcy; an attempt by them, also, to ask your Honor to determine the intentions of the parties, by this contract that they intended to be partners, and, therefore, they are liable. That is what your Honor will have to decide, and, therefore, [67] it is necessary to ask them what is in the minds of these parties. Did their minds meet? Was there an agreement in their minds as evidenced by writing? I think it is important for your Honor to hear what was the intention of the parties.

Mr. Johnston: I think it is taking away from the Court. I put in an objection. It is incompetent, irrelevant and immaterial. It is leading and suggestive. And, furthermore, it is deciding something that the Court should decide. Asking what his intention was at the time! He entered into an agreement. It is for the Court to determine whether they were partners; and we can't go out and ask people what their intention was at the time they signed the contract, was their intention to do this, or intention to do that. It was what was said and done by the parties, if that is competent, plus what is in the contract, leading up to it.



(Testimony of Gerry Horton.)

Mr. McGugin: I think the objection is good.

Mr. Colby: I will accept your Honor's ruling.

Mr. McGugin: I will sustain it.

Mr. Colby: There is no exception now necessary to a ruling?

Mr. McGugin: No.

Q. (By Mr. Colby): Now, Mr. Horton, was there anything said in your conversation with Mr. Kaufman concerning what he was to do after the potatoes were grown and shipped to him? Was there anything said about that? [68]

A. Yes.

Q. What was said? What did he say, and what did you say? A. Generally, he wanted——

Q. What did he say, please?

A. I can't remember exactly what he said.

Q. Not exactly, but the substance.

A. The substance of our conversation was this: He asked me if he could handle all the potatoes he was interested in, and I told him so far as I was concerned he could have first option to buy any or all the potatoes we produced, at the prevailing market, and I believe he accepted that.

Q. What did he say? He said that—what did he say? He didn't use the word "accepted"?

A. No.

Q. What did he say?

A. He said that would be all right, if I would pay him a fee for handling each sack we shipped there the same as he would if he bought stuff from somebody else; so I agreed to do that, and I thought

(Testimony of Gerry Horton.)

that was all right; that was part of our agreement as well.

Q. Did you narrate the substance of that conversation to your counsel to put into this contract?

A. Yes.

Q. And that is why there is a paragraph VIII making a provision for that? [69]

A. That is right.

Q. Did you ship any potatoes to Mr.—to the Kaufman-Brown Company after they were harvested? A. Yes.

Q. Did they pay you for them? A. Yes.

Q. Did they withhold or deduct from the potatoes you shipped any of the advances they made?

A. No, I don't believe they did.

Mr. Colby: There is in evidence here, your Honor, and I don't know where they are, the various drafts and checks. Is that in here?

Mr. Johnston: I think that is in there.

Mr. Kendall: They were introduced for identification. I think they should be introduced for——

Mr. Colby: That was what I was thinking. Here they are.

Q. (By Mr. Colby): I will show you a series of drafts, totaling 42,594.82, marked Respondent's Exhibit "B" for Identification on a prior hearing. Do you know of your own knowledge whether that represents the amount of the advances by the Kaufman-Brown Potato Company on these two deals? A. You mean the entire amount?

Q. Yes.

(Testimony of Gerry Horton.)

A. No, I don't know for certain just what it represents. It probably represents the advances, as well as—wait a [70] minute. That is how much? What was the total amount?

Q. 42,594.82.

A. Let me examine the drafts. (Examines exhibit.) Of course, these checks, or these drafts—or they are checks, don't specifically refer to either one of my companies. I imagine they are.

Mr. Kendall: We should read into the record.

Mr. Johnston: I don't think there is any dispute on those things.

Mr. Colby: I was just laying a foundation here. If you will stipulate to that——

Mr. Kendall: We proved it that time, and they weren't introduced in evidence.

A. Are they introduced in evidence?

Mr. Johnston: There wasn't any dispute as to the amount. He testified that the chattel mortgage was all paid off.

Mr. Colby: You did?

Mr. Johnston: Yes, he did. It is in the record.

Mr. Colby: I don't recall it.

Mr. Johnston: The chattel mortgage was paid off; that is what he testified to.

Mr. Kendall: And there was an unsecured claim for the balance. "We received back \$20,000.00." And he claims for the difference. Page 31 of the transcript. Here is the theory of that. Maybe I can explain that to you, Sam; you [71] remember the time. Our claim is filed on certain checks that

(Testimony of Gerry Horton.)

were issued to us. There were checks given in payment of the crop mortgage they never claimed.

Mr. Johnston: That is here in——

Mr. Kendall: That was merely to show our total advancements.

Mr. Johnston: You look at your claim, and it shows that there is one for eight hundred and some odd dollars.

Mr. Kendall: Before we get off on a tangent, may we have those introduced in evidence instead of just for identification?

Mr. Johnston: I don't think they have anything to do with it. If you explain what you want to——

Mr. Kendall: Yes, we want to show the total advances made; in other words, the checks that were issued to us on which our claim is based on. We were ordered to support our claim here on an order to show cause, and in answer to it we brought in these checks.

Mr. Johnston: We spent a lot of time arguing, Mr. Kendall; as against the Company, we have but one claim: that is the overdraft of Gerry Horton. The remainder of the claim arises from the farming of the farm. Here is the check right there. If you want to introduce those, those total your amount. They are already in. There is the claim right there: The Gerry Horton Company, that is one check; the other checks are on the farm. Those checks, I don't think, have anything [72] to do with it.

Mr. Kendall: I think it is material, still, and

(Testimony of Gerry Horton.)

I would like to have them introduced there to show we paid off the money, to substantiate our claim.

Mr. Johnston: We already have that in here. There is no objection to their claim as to the amount. Those checks are there.

Mr. Colby: Is it stipulated that Kaufman & Brown turned over a certain sum to Mr. Gerry Horton?

Mr. Johnston: I don't know what the sum is. If we go into that, we will be here a week. They claim a certain amount of money, and that is the only claim here. One is against Gerry Horton Company, and the other is Gerry Horton Farms. We have already stipulated in the record your claim of 884.97 is a claim against the Compan. I said there was no objection. Now, the other creditors are checks on Gerry Horton Farms.

Mr. McGugin: Now, that is the basis of their claim they filed in bankruptcy?

Mr. Johnston: We are not objecting to the amount. We are objecting to the checks. They are not entitled to participate in the dividends as against other creditors if they are partners.

Mr. McGugin: I understand that. Now, the basis—did these checks not establish the actual transfer of the money from Horton to Kaufman & Brown? [73]

Mr. Kendall: I say those checks show money paid in by us for the growing of that crop and are the consideration for the return of the advances.

Mr. Johnston: I am going to object to them as

(Testimony of Gerry Horton.)

immaterial. If he wants to accept them, it is all right.

Mr. McGugin: We will receive them in evidence.

Mr. Colby: May I proceed now?

Mr. McGugin: Yes, you may proceed.

Q. (By Mr. Colby): Mr. Horton, I show you a check dated July 4, 1944, paid to the order of Kaufman-Brown Potato Company in the sum of 7,594.82, signed Gerry Horton Farms by Gerry Horton. Is that your signature on the check?

A. Yes.

Q. Do you recall this check? A. Yes.

Q. Whose handwriting is this check in?

A. I don't know whose handwriting the check is in.

Q. I call your attention—is that your bookkeeper or accountant?

A. Undoubtedly the bookkeeper.

Q. Yes. I draw your attention to the notation in the upper left-hand corner of the check, as follows: "On loan, 7,594.82." Was that notation on check at the time you signed it? A. Yes.

Q. I draw your attention—by the way, this check was never made good; was it? A. No.

Q. You did not have funds in the bank at that time? A. We did not.

Q. I show you another check—

A. We didn't have funds in the bank at the time the check was presented.

Q. That is right—check 723, dated July 12, 1944, payable to Kaufman-Brown Potato Company,



(Testimony of Gerry Horton.)

in the amount of \$5,000.00; upper left-hand corner,  
“On loan: 5,000.”

Mr. Johnston: All this testimony isn't binding upon any of the creditors.

Mr. Colby: What? It is for the Court——

Mr. Johnston: It is for the Court to determine; but this particular line of questioning, what someone wrote on a check, wouldn't bind the creditors so far as the partnership agreement is concerned. I want my objection.

Mr. McGugin: That doesn't determine the legal—necessary legal status or relationship of the parties at all.

Mr. Johnston: No.

Mr. Colby: Your Honor, you will have to determine that from all the evidence.

Q. (By Mr. Colby): I will show you that check. It wasn't cashed or made good? [75] A. No.

Q. I will show you another check, July 12, \$5,000.00, same notation, “On loan.” Is that your signature on that check? A. It is.

Q. And that check was never made good; was it?

A. That is right.

Q. Now, I show you another check, July 12, 1944, and \$5,000.00, with a similar notation, “On loan.” Is that your signature on that check?

A. Yes.

Q. And that check was never made good; was it?

A. No.

Q. Now, Mr. Horton, the most part of the afternoon you identified certain creditors' claims that

(Testimony of Gerry Horton.)

would apply to, thought would apply to, the potato deal. You recall most of them? Have you got the list there? Let's take the one for the Pacific Gas & Electric Company. Did you have dealings with this company prior to November 16, 1943?

A. Yes.

Q. On other operations? A. Yes.

Q. Now, at the time you started on the operations, what we called all afternoon "the potato deal," did you make application for this company for credit for the use of electricity? [76]

A. Yes, we must have. An application is necessary for each new place.

Q. In this application did you mention that you were a partner with Kaufman-Brown Potato Company?

Mr. Johnston: Just a minute. That is incompetent, irrelevant and immaterial, what he mentioned to some creditor.

Mr. McGugin: I think the objection is probably good. I don't see any relevancy in it or how that would affect the legal relation, whether or not he mentioned that fact.

Mr. Colby: Except the reliance of these creditors it was and shows they are relying upon this contract that we are partners; or is this an afterthought by counsel in the midst of a bankruptcy that so and so were partners? In other words, when he purchased this contract, there is a balance of \$2,254.00, he went into the Pacific Gas & Electric and told them, "I want you to know, I want you to understand, Kauf-

(Testimony of Gerry Horton.)

man & Brown of Chicago"—maybe a million dollar concern, by the way of argument—"is my partner in my deal," and he was extended credit relying on that; that would be one theory to hold they were, and I am trying to substantiate by the evidence there was no such representation.

Mr. McGugin: I don't think if he did make such a representation it wouldn't have established a partnership; and whether he made that, or not, I really don't see any relevancy. I sustain the objection.

Mr. Colby: I will accept the ruling. And may I ask one question, generally, and also accept your Honor's ruling on any of these creditors?

Q. (By Mr. Colby): Did you make the statement that Kaufman & Brown Potato Company were partners with you in these ventures?

Mr. Colby: Same objection?

Mr. Johnston: Same objection: incompetent, irrelevant and immaterial.

Mr. McGugin: Sustained.

Mr. Colby: There was introduced in evidence here a note and chattel mortgage on certain equipment to the bank. I have forgotten the name of the bank.

Mr. Kendall: Kern County Bank.

Mr. Colby: Kern County Bank.

Q. (By Mr. Colby): Did you make an application with the bank for credit at the time you secured that loan?      A. Yes.

Q. Did you at that time make a statement to

(Testimony of Gerry Horton.)

the bank, either orally or in writing, that Kaufman-Brown Potato Company were your partners?

Mr. Johnston: I object to that as incompetent, irrelevant and immaterial; no way binding upon the Trustee or any of the creditors.

Mr. McGugin: Same ruling. [78]

Q. (By Mr. Colby): At that time did you have another loan with the bank?

Mr. Johnston: That would be immaterial, whether he had other loans, or not.

Mr. McGugin: How do you feel that would be material?

Mr. Colby: To show that the course of dealing, that credit was extended to him personally and not to the Kaufman-Brown Potato Company.

Mr. Kendall: It is our position in regard to that claim, definitely, your Honor. He went out and borrowed money which he put into this venture. It wouldn't make us liable. It wouldn't take a third person to follow that money into that venture. In other words, he went to the bank on his own credit and got money; he had certain obligations with them, and the bank wasn't looking to this venture, they were looking to him, and they took a mortgage on his property the same as he made other loans. And I think it is material to show he had credit and got it on his own credit. It is evidence. We sold certain of his property and sold it to the Kern County Bank. We got a lien out of it.

(Testimony of Gerry Horton.)

Mr. Johnston: I still say it is immaterial; that doesn't mean anything, the other loan he had.

Mr. Colby: It shows he had credit with the bank.

Mr. McGugin: Whatever line of credit he had, it wouldn't make any difference. Suppose you and I went into partnership [79] and I have a line of credit at the bank which I established by previous dealing with the bank; and after we go into partnership I go down to the bank and borrow more money, would it make a difference in the partnership whether they loaned it to because of previous dealings or whether they loaned it to me as a member of the partnership?

Mr. Kendall: If they loaned it to you as a member of the partnership, that would be one thing. But here we have nothing but evidence of an individual loan, which loan was made——

Mr. McGugin: I think if they made a loan to me and I was a partnership member, whether they realized it or not, however, it was for the purposes of the parties, it would be a partnership debt.

Mr. Kendall: This can be off the record.

Mr. Colby: (After further discussion.) I will accept your ruling on that.

Mr. McGugin: Yes, I think the objection is good.

Q. (By Mr. Colby): Did you make an assignment of any of the leases to the Kaufman-Brown Potato Company? Did you assign any interest to those leases to them?

(Testimony of Gerry Horton.)

Mr. Johnston: Just a minute.

Mr. Colby: You asked him that question yourself.

Mr. Johnston: Outside these contracts? You mean outside these contracts?

Mr. Colby: Outside of which contract? That speaks for [80] itself. In addition to that.

Mr. Johnston: I have no objection to that.

A. No, I did not assign. I did not get your question correctly. I didn't assign anything having to do——

Q. (By Mr. Colby): You were the owner of the those leases at all times during operation of the potatoes? A. That is right.

Q. Did you transfer, by bill of sale or otherwise, any of the equipment to the Brown Potato Company? A. No.

Q. Or to the Brown Potato Company and Alt-house and Horton as a partnership, did you make any transfers? A. No, I didn't.

Q. Did Mr. Kaufman or Mr. Brown ever participate in the matter of the operation of the two potato crops at Shafter and Arvin?

Mr. Johnston: Now, just a minute. It is leading and suggestive, calling for conclusion. And what did they do?

Mr. Colby: I will say "whether or not they participated."

Mr. Johnston: That is leading and suggestive.

Mr. Colby: Not with respect to whether or not.



(Testimony of Gerry Horton.)

He can answer one way or the other.

Mr. Johnston: What is participating calls for a conclusion of the witness.

Mr. Colby: If he answers, he can say, "No, they didn't [81] do anything"; the question is all answered.

Mr. McGugin: I think the question is leading and suggestive. If you will reframe the question.

Mr. Colby: All right.

Q. (By Mr. Colby): You stated that Mr. Brown and Mr. Kaufman came out to California. Will you tell us what they did in connection with your farming operations on the Shafter and Arvin properties?

A. That is right. Yes, they came out to survey the operation, its progress, and they had certain recommendations to make as to when we would start digging the potatoes, because it was naturally of interest to them; and they had men helping them around the warehouse. It was a matter of them having interest in my operations and wanted to see that they were well taken care of, I guess.

Q. Did they hire any of your help?

A. Beg your pardon?

Q. Did they hire any of your help?

A. No.

Q. Did they fire any of your help?

A. No.

Q. Did they buy any material for your operations, any of the supplies?

(Testimony of Gerry Horton.)

A. You mean did they sign the order for that, or did they pay for them? [82]

Q. Did they buy any of it for the operation, themselves?

A. No. I bought all the materials used in the operations.

Q. You were the manager all the way through, all through this deal, were you not?

A. That is correct.

Q. Did they interfere any way whatever in your management of these operations?

A. No.

Q. Did they have any right to sign checks on the bank account of the operation on the potato deal?

A. No.

Q. When they paid you for those cars of potatoes that were shipped to Chicago, what did you do with those proceeds?

Mr. Johnston: Which did they pay?

Mr. Colby: He testified on your examination first carloads of potatoes were shipped, or maybe under my examination.

Mr. Johnson: To which Company?

Mr. Colby: To the Brown Potato Company, to the Kaufman-Brown Potato Company.

Mr. Johnston: They were shipped by which company? One is the Company, and one is the Farm.

Mr. Colby: I am only interested in the Farm.

Q. (By Mr. Colby): The Farm shipped some potatoes?

A. They could have.

(Testimony of Gerry Horton.)

Q. Don't you know that you did? [83]

A. The Company is supposed to be the shipping organization; the Farm is the growing organization.

Q. I am not interested in that. The Farm Company had the lease and raised these potatoes.

A. That is right.

Q. And when you shipped them, who shipped them? Whose potatoes were they?

A. They were owned by the Farm, Gerry Horton Farms.

Q. Well, of course, Althouse was your partner in farming ventures. It wasn't any different, except in name. Is that right?

A. That is right.

Q. All right. When you shipped those potatoes, pursuant to your contract, you received checks for them. What did you do with that money?

A. It was deposited to either the account of the Farms or the Company; I don't know which.

Q. What did you do with them, then? Your harvest had ceased for that time. What did you do with those farms?

A. Not necessarily, the harvest had not ceased. As potatoes were done, they may be sold over a period of sixty days; we might continue digging for sixty days.

Q. How were they sold; over what period?

A. They were probably sold over a period of thirty to forty-five days. [84]

(Testimony of Gerry Horton.)

Q. And as this money came in for these various carloads of potatoes,—

A. Uh-huh.

Q. —and you deposited it to your account,—

Mr. Johnston: Now, wait a minute. Show him these checks if you are asking him about them.

Mr. Colby: Wait a minute.

Mr. Johnston: Which account are you talking about? There are two shipments of potatoes. Which are you talking about, the Company's or the Farm's? Refer to it so they will know what you are talking about.

Mr. Kendall: To clarify it: All you did was take the Farm material and ship them through the Company.

Q. (By Mr. Colby): There was only one shipment, only from the Farm; is that true?

A. There are two businesses on record there.

Q. We know that. Did the Horton Company buy potatoes from other farms and shippers and ship them under that deal?

A. Not under that deal. No. It is the practice of Gerry Horton Company to buy, ship and sell potatoes, both from other growers,—

Q. Did they do so during the operations of the Shafter-Arvin deal to the Kaufman-Brown Potato Company?

A. I can't testify correctly as to that, because it is quite possible we did on their request. We acted as their [85] agents in a good many cases when they

(Testimony of Gerry Horton.)

were unable to buy from other growers. We many times bought them under the name of Gerry Horton Company and shipped them to them. And that might have happened during this period of time. I can't testify for sure.

Q. Then your operations, Mr. Horton, were concluded, and you sold all your potatoes. What did you find happened to these two potato deals, this Arvin and Shafter deal? Did you find there was a loss? A. We found there was a loss.

Q. How much was the loss?

A. I don't know. It was inconsequential on the Shafter deal.

Q. What do you mean by "inconsequential"?

A. It was practically a break-even deal; in fact, I think a few dollars were gained by the Shafter deal.

Q. All right.

A. And we had a very close—I believe it was a total loss on the Arvin property.

Q. What do you mean by "total loss"? How much was that?

A. Well, let's see. I guess, roughly, from twenty to twenty-five thousand dollars, something like that.

Q. During the operation of these two potato crops on the Shafter and Arvin deal, you withdrew money from this bank account, from both bank accounts, did you not, for living [86] expenses?

A. Yes.

Q. And did you engage in any other business

(Testimony of Gerry Horton.)

ventures or operations? Did you buy anything during that period of time; substantially, I mean?

A. Yes, we were buying for other accounts. I mean having nothing to do with Kaufman & Brown. It is quite possible we did.

Q. You don't understand. Did you use any of the money that was advanced by Kaufman & Brown Potato Company for other ventures? A. No.

Q. Did you deposit it in the second account you had? You only had two checking accounts, didn't you? A. No, we had three.

Q. What was the name of the third checking account? A. It was in a different bank.

Q. But it was in the same name, the name of the two firms? As a matter of fact, you changed funds from one bank to the other bank, did you not? A. That is correct.

Q. There was one check of a thousand dollars that you identified that was not used by the Farms Company, that was paid by the Farms Company to the Horton Company for deposit?

A. Yes. [87]

Q. You don't know what that was for?

A. No, I can't recall.

Q. And do you know there was any other sums likewise used in that manner?

A. Undoubtedly. We had, continually, necessity for transferring from one Company to the other. Sometimes it would be transferred to the Farms, and sometimes in favor of the Company.



(Testimony of Gerry Horton.)

Q. When it came to the shipment of potatoes to Kaufman-Brown Potato Company, did either Mr. Kaufman or Mr. Brown have any voice in what potatoes were to be shipped, which potatoes there were to be shipped? A. Yes.

Mr. Johnson: Go ahead.

A. In fact, they had the entire voice in that matter. They selected the ones they wanted, and it was their option to which they took them or not.

Q. (By Mr. Colby): Yes. It was their option as to which they wanted? A. Yes.

Mr. Colby: That is all of this witness.

### Cross-Examination

By Mr. Johnston:

Q. Mr. Horton, you don't remember all the conversation you had back in Chicago with Mr. Kaufman and Mr. Brown, do you?

A. No, only just what I referred to a little while ago. [88]

Q. And you don't remember all the conversation you had over the telephone from Minneapolis, do you? A. No, I don't believe I did.

Q. You don't remember all the conversation you had with your attorney, Mr. Chain, when you came back and asked him to prepare this agreement that is introduced in evidence, Defendant's Exhibit "E"? A. No.

Q. But what you told Mr. Chain to put in the contract was based upon what your agreement was

(Testimony of Gerry Horton.)

with Mr. Brown and Mr. Kaufman back in Chicago?

Mr. Colby: Just a moment. That is asking, introducing matter not in evidence; your Honor will hear the question as told the reporter.

Mr. Johnston: Read it.

(Question is read by reporter.)

Mr. Johnston: I will change it.

Q. (By Mr. Johnston): What you told Mr. Chain was what your conversation was back in Chicago, was it? A. Yes.

Q. With Mr. Kaufman and Mr. Brown?

A. Yes.

Q. Then Mr. Chain prepared this contract, and you sent it back to Mr. Brown and Mr. Kaufman after you had read it? A. Yes. [89]

Q. And then you and your partner signed it?

A. Yes.

Q. Now, then, after that contract was entered into, you went into this deal out at Arvin, didn't you?

A. Well, they were all decided on at the same time; but for some reason or other there is a difference in the date of our contracts.

Q. Well, one of them had to be corrected on account of the acreage; isn't that it?

A. That is right.

Q. And that was dated later?

A. That is right.

Q. And when you related your conversation to

(Testimony of Gerry Horton.)

Mr. Brown—or to Mr. Chain, it dealt with the conversation that you had had with Mr. Kaufman and Mr. Brown as to both contracts, didn't it?

A. That is right.

Q. Now, Mr. Colby asked you if you were in any other kind of business, and you said you were buying and selling. Now, the buying and selling was handled by the Company and not by the Farm?

A. That is correct.

Mr. Johnston: I think that is all.

Mr. Colby: That is all, your Honor. [90]

State of California,  
County of Kern—ss.

I, Virginia Dieter, hereby certify that I, as official reporter, was present and correctly took down in shorthand all the testimony given and proceedings had in the foregoing-entitled matter on the 8th day of December, 1947; and I further certify that the annexed and foregoing is a full, true and correct statement of such testimony and proceedings, and a full, true and correct transcript of my said shorthand notes thereof.

Bakersfield, California, December 12, 1947.

/s/ VIRGINIA DIETER,  
Official Reporter.

[Endorsed]: Filed July 22, 1948, U.S.D.C.

[Endorsed]: Filed Oct. 31, 1949, U.S.C.C. [91]

[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 145, inclusive, contain the original Involuntary Petition by Three Creditors; Order of General Reference; Order of Adjudication of Bankruptcy and Order for Filing of Schedules in Bankruptcy; Certified Copy of Order Approving Trustee's Bond; Petition for Order Amending, Modifying and Changing Order of Adjudication and Petition for Order to Show Cause Directed Against Partners; Order to Show Cause; Answer to Order to Show Cause; Stipulation; Referee's Memorandum of Opinion; Findings of Fact and Conclusions of Law; Order; Petition for Review; Certificate by Referee to Judge on Order Modifying Adjudication to Include Kaufman-Brown Potato Company as one of the General Partners of Gerry Horton Farms; Order Affirming Order of Referee re Adjudication; Proof of Unsecured Debt and Letter of Attorney of Kaufman, Brown Potato Company; Objection to Claim of Kaufman-Brown Potato Company; Order to Show Cause; Findings of Fact and Conclusions of Law as to Kaufman-Brown Potato Company Claim; Order; Petition for Review; Certificate by Referee to Judge on Order Disallowing Claim of Kaufman-Brown Potato Company in Part; Order Affirming Order of Referee re Claim

of Kaufman-Brown Potato Company; Notice of Appeal filed August 24, 1949; Notice of Appeal from Order re Adjudication; Notice of Appeal from Order re Claim of Kaufman-Brown Potato Company; Statement of Points Upon Which Appellant Will Rely Upon Appeal from Order re Adjudication; Statement of Points Upon Which Appellant Will Rely Upon Appeal from Order re Disallowance of Claim; Statement of Points Upon Which Appellants Will Rely Upon Appeal Filed August 24, 1949; Order Extending Time to File Record and Docket Appeal; Designation of Record on Appeal; Amended Statement of Points Upon Which Appellant Will Rely Upon Appeal from Order re Disallowance of Claim; Amended Statement of Points Upon Which Appellant Will Rely on Appeal Filed August 24, 1949; Amended Statement of Points Upon Which Appellant Will Rely on Appeal from Order re Adjudication and Three Affidavits of Service and a full, true and correct copy of Minute Order entered July 25, 1949, which, together with original Respondents' Exhibits A, D and E and Reporter's Transcript of Proceedings on March 21, 1947, December 8, 1947, and May 12-13, 1947, transmitted herewith, constitute the record on appeals to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.80 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 28th day of October, A.D. 1949.

EDMUND L. SMITH,

Clerk.

[Seal]        /s/ THEODORE HOCKE,

Chief Deputy.

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[Endorsed]: No. 12390. United States Court of Appeals for the Ninth Circuit. Kaufman-Brown Potato Company, a Partnership, Composed of Charles H. Kaufman and Albert H. Brown, Charles H. Kaufman and Albert H. Brown, Appellants, vs. Wayne Long, as Trustee in Bankruptcy of the Estates of Gerry Horton and J. D. Althouse, Doing Business as Gerry Horton Company, a Co-Partnership; Gerry Horton and J. D. Althouse, Doing Business as Gerry Horton Farms, a Co-Partnership; Gerry Horton, an Individual, and J. D. Althouse, an Individual, Appellees. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Northern Division.

Filed October 31, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.



United States Court of Appeals  
for the Ninth Circuit

No. 12390

In the Matter of

GERRY HORTON and J. D. ALTHOUSE, Doing Business as GERRY HORTON COMPANY, a Copartnership; GERRY HORTON and J. D. ALTHOUSE, Doing Business as GERRY HORTON FARMS, a Copartnership; GERRY HORTON, an Individual, and J. D. ALTHOUSE, an Individual,  
Bankrupts.

CONCISE STATEMENT OF POINTS ON APPEAL AND DESIGNATION OF RECORD NECESSARY FOR CONSIDERATION THEREOF AND TO BE PRINTED (APPEAL FROM JUDGMENT ENTERED IN JUDGMENT BOOK 5, PAGE 258, RE ADJUDICATION IN BANKRUPTCY)\*

CONCISE STATEMENT OF POINTS ON APPEAL AND DESIGNATION OF RECORD NECESSARY FOR CONSIDERATION THEREOF AND TO BE PRINTED (APPEAL FROM JUDGMENT ENTERED IN JUDGMENT BOOK 5, PAGE 271, RE DISALLOWANCE OF CLAIM)\*

CONCISE STATEMENT OF POINTS ON AP-  
PEAL AND DESIGNATION OF RECORD  
NECESSARY FOR CONSIDERATION  
THEREOF AND TO BE PRINTED (AP-  
PEAL FILED AUGUST 24, 1949)\*

[\*Three separate documents — Title of Court, Cause, Number, Filing Date and the following copy are identical in each.]

To the Honorable United States Court of Appeals  
for the Ninth Circuit:

For their concise statement of points on appeal on which the appellants intend to rely, the appellants, and each of them, adopt the amended statement of points heretofore filed with the Clerk of the United States District Court for the Southern District of California, Central Division.

The Appellants hereby designate the entire record on appeal certified by the Clerk of said United States District Court with the exception hereinafter noted, as necessary for the consideration of the appeal in this cause and to be printed. The said exception is as follows:

Exhibits "A," "B," "C," "D" and "E" to the Petition for Order Amending, Modifying and Changing Order of Adjudication and Petition for Order to Show Cause directed against partners, shall not be printed, said exhibits being contained in pages 18 to 37 of said record on appeal, and in lieu thereof this statement shall be printed, to wit:

“Exhibit ‘A’ to this Petition, being a copy of the involuntary petition in bankruptcy, is not here set forth in that the original thereof is contained in the said record on appeal, pages 18 to 24, thereof;

“Exhibit ‘B’ to this Petition, being a copy of Order of References, is not here set forth in that the original thereof is contained in the said record on appeal at page 25, thereof;

“Exhibit ‘C’ to this Petition, being a copy of the Order of Adjudication of Bankruptcy and Order for Filing of Schedules in Bankruptcy, is not here set forth in that the original thereof is contained in the said record on appeal at page 25, thereof;

“Exhibit ‘D’ to this petition, being a copy of Agreement dated the 22nd day of January, 1944, is not set forth in that the original thereof is contained in the said record on appeal as respondent’s ‘Exhibit D’; and

“Exhibit ‘E’ to this petition, being a copy of Agreement dated the 16th day of November, 1943, is not set forth in that the original thereof is contained in the said record on appeal as respondent’s ‘Exhibit E.’ ”

The within document is to be printed as part of the record, in addition to those items already designated; all filing stamps shall appear in the printed record, but the titles of the Court and the cause, and

the names and addresses of attorneys appearing above the captions shall be omitted in printing.

Dated: This 28th day of October, 1949.

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellants.

[Endorsed]: Filed Oct. 31, 1948.

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[Title of Court of Appeals and Cause.]

ORDER CONSOLIDATING APPEALS FOR  
PRINTING, BRIEFING AND HEARING  
PURPOSES

A stipulation by and between the Appellants and Appellees in the hereinafter described appeals having been filed wherein it is stipulated that this Order may be made, and the Court having considered said stipulation, and good cause appearing therefor,

It Is Hereby Ordered that the following appeals, to wit:

(a) Appeal filed August 24, 1947, from Order of United States District Court for the Southern District of California;

(b) Appeal from Order of United States District Court for the Southern District of California, entered in Judgment Book 5, Page 258, re Adjudication in Bankruptcy, and

(c) Appeal from Order of United States Dis-

trict Court for the Southern District of California, entered in Judgment Book 5, Page 271, re Disallowance of Claim,

be and the same are hereby consolidated for printing, briefing and hearing purposes.

Dated: This 8th day of November, 1949.

/s/ WILLIAM DENMAN,

/s/ HOMER T. BONE,

/s/ WM. E. ORR,

Judges of the United States  
Court of Appeals.

[Endorsed]: Filed Nov. 8, 1949.

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[Title of Court of Appeals and Cause.]

STIPULATION THAT APPEALS MAY BE  
CONSOLIDATED FOR PRINTING,  
BRIEFING AND HEARING PURPOSES

Whereas, appeals are now pending in the above-entitled Court, as follows:

(a) Appeal filed August 24, 1949, from Order of United States District Court for the Southern District of California;

(b) Appeal from Order of United States District Court for the Southern District of California, entered in Judgment Book 5, Page 258, re Adjudication in Bankruptcy.

(c) Appeal from Order of United States District Court for the Southern District of California, entered in Judgment Book 5, Page 271, re Disallowance of claim, and

Whereas, the appeals have designated the same portions of the records, proceedings and evidence to be contained on the record on appeal in each of said appeals, and

Whereas, it appears that the issues to be determined in connection with said appeals are primarily of like nature,

Now, Therefore,

It Is Hereby Stipulated and Agreed by and between the Appellants and the Appellees, by their respective counsel, that an Order may be made by the above-entitled Court consolidating the said three appeals for printing, briefing and hearing purposes.

Dated: This 5th day of Nov., 1949.

/s/ SAMUEL C. COLBY,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellants.

HARVEY, JOHNSTON,

BAKER & PALMER.

/s/ C. W. JOHNSTON,

Attorneys for Appellees.

[Endorsed]: Filed Nov. 8, 1949.